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ACTIONS.

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At common law loss and damage may accrue and a right of action accrue to persons dependent upon one wrongfully injured; but this cause of action, except for loss of services prior to death, abates at the death. *Michigan Central R. R. Co.* v. *Vreeland*, 59.

2. *Ex parte or adversary; effect of failure of party to file answer after notice.*

A hearing and decision on a contest where the contestant files no answer after notice is not an *ex parte* proceeding, but an adversary proceeding. *Ross* v. *Stewart*, 530.

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Where the claimants to the same land have both paid the taxes thereon continuously, they stand on equal footing, and the payment does not establish adverse possession. *Stuart* v. *Union Pacific R. R. Co.*, 342.

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APPEAL AND ERROR.

1. *Administrative orders reviewable, when; effect of act providing for review.*

Administrative orders can only be reviewed by the court where a justiciable question is presented, and where the act provides for judicial review of such orders it will be construed as providing for a hearing so that the court may consider matters within the scope of judicial power. *Interstate Com. Comm.* v. *Louisville & Nashville R. R. Co.*, 88.

2. *Bankruptcy; right of appeal from order granting or refusing discharge.*

Under the Bankruptcy Act the only appeal from a judgment granting or refusing a discharge is from the Bankruptcy Court to the Circuit Court of Appeals. There is no appeal from the Circuit Court of Appeals to this court. *James* v. *Stone*, 410.

3. *Criminal contempt; judgment reviewable, how.*
A judgment for criminal contempt is reviewable only by writ of error. An appeal will not lie. *Grant* v. *United States*, 74.

4. *Criminal contempt; review of judgment for; who entitled to writ of error.*
Only the person charged with contempt can sue out the writ of error; one who appeared simply to state his claim to the books and papers mentioned in the subpœna does not thereby become a party to the proceeding and he has no standing to sue out a writ of error. *Ib.*

5. *Continuances; allowance and refusal of; judicial discretion as to; action of this court on assertion of error.*
Ordinarily the granting or refusing of a continuance is within the discretion of the trial court and will only be interfered with by this court in a clear case of abuse; but in this case the assertion of error based upon the refusal to continue has some foundation, and is not merely frivolous, so the motion to affirm is denied. *Guardian Assurance Co.* v. *Quintana*, 100.

6. *Dismissal for failure to file bill of exceptions; when delay excused.*
While it is the duty of plaintiff in error to obtain the approval of the bill of exceptions by the judge who tried the case, or, in case of his death or disability, by his successor, there are circumstances under which delay will be excused; and a motion to dismiss under Rule 9 for failure to file the bill denied, so as to give the plaintiff in error reasonable opportunity to have the bill settled. *Ib.*

7. *Dismissal for failure to file bill of exceptions; when delay excused.*
In this case, the trial judge having died and neither party having moved for a settlement of the bill by his successor, and there having heretofore been room for doubt as to whether § 953, Rev. Stat., governs this case, the motion to dismiss is denied, but without prejudice to renew if plaintiff in error does not within a reasonable time seek a settlement of the bill. *Ib.*

8. *Record: supplementary transcript; when bill of exceptions may be incorporated in.*
Where a transcript of record has been filed for purposes of a motion to dismiss for want of bill of exceptions, which is denied without prejudice, the bill when settled, or the reasons for failure to obtain its settlement, can be included in a supplementary transcript. *Ib.*

9. *To review action of trial court in granting or refusing separate trial of parties jointly indicted.*
Granting a separate trial to one of several jointly indicted for con-

spiracy is within the discretion of the trial judge, reviewable only in case of abuse. *Heike* v. *United States*, 131.

See CONSTITUTIONAL LAW, 19;
JURISDICTION.

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See PUBLIC LANDS, 25.

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See PRIVILEGED COMMUNICATIONS.

BAIL.

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BANKRUPTCY.

1. *Acting or forbearing to act under § 29b 5 of Bankruptcy Act; what constitutes.*

In the absence of any proof to that effect in the record, a promise by the bankrupt made between the petition and the discharge to pay the balance of his provable debt to one of his creditors who advanced money to enable him to effect a composition without obtaining any undue preference over the other creditors, will not be regarded as an act of extortion or attempted extortion in violation of § 29b 5 of the Bankruptcy Act, prohibiting acting or forbearing to act in bankruptcy proceedings. *Zavelo* v. *Reeves*, 625.

2. *Compositions; acquisition of money for; use of bankrupt's credit.*

As § 12 of the Bankruptcy Act requires that money for effecting the composition be deposited before the application to authorize it, it contemplates that the bankrupt may acquire such money by use of his credit. *Ib.*

3. *Discharge; effect of, on liability under new promise.*

A discharge, while releasing the bankrupt from legal liability to pay a provable debt, leaves him under a moral obligation that is sufficient to support a new promise to pay it. *Ib.*

4. *Discharge; effect on debt and remedy.*

The theory of bankruptcy is that the discharge does not destroy the debt but does destroy the remedy. *Ib.*

5. *Discharge; relation.*
As a general rule, the discharge when granted relates back to the inception of the proceeding, and the bankrupt becomes a free man as to new transactions as of the date of the transfer of his property to the trustee. *Ib.*

6. *Discharge; relation.*
This court by promulgating General Orders and Forms in Bankruptcy construed § 63a 4 as confining the discharge to provable debts existing on the day of the petition and having it relate back thereto. *Ib.*

7. *Discharge; provable debts included in.*
Obligations created after the filing of the petition and before the discharge are not provable under § 63 and therefore are not included in the discharge. *Ib.*

8. *Intent to defraud and intent to prefer differentiated.*
There is a difference between intent to defraud and intent to prefer—the former is *malum per se* and the latter *malum prohibitum* and only to the extent forbidden. *Van Iderstine* v. *National Discount Co.*, 575.

9. *Preferences; intent to defraud; general verdict in equity case held not to be finding of.*
A general verdict in an equity case to declare a payment to be a fraudulent preference in favor of the trustee, which was only advisory, and which was practically demanded by the instructions of the court, cannot be treated as a finding of intent by the bankrupt to defraud, of which intent defendant had notice. *Ib.*

10. *Preferences; transfer of securities to secure loan to one immediately thereafter becoming bankrupt.*
A *bona fide* transfer of securities to secure a loan made to one who immediately thereafter becomes a bankrupt is not an illegal preference where the person making the loan has no knowledge that the borrower intends to defraud any of his creditors, even though he may know that the whole or part of the money loaned is to be used to pay some of his debts. *Ib.*

11. *Promise to pay provable debt; validity of.*
Under the Bankruptcy Act of 1898 an express promise to pay a provable debt is good although made after the petition and before the discharge. *Zavelo* v. *Reeves*, 625.

See APPEAL AND ERROR, 2;
JURISDICTION, A 7, 8; B; C 2, 3, 4.

BAY-WINDOWS.
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1. *Liability on bond given to secure performance of contract.*

In this case *held* that a bond given in pursuance of an ordinance, for faithful performance of a contract, was solely for the complete result at the end of the period specified, and that it did not permit a recovery of the whole penalty upon any intermediate breach. *Porto Rico* v. *Title Guaranty Co.*, 382.

2. *Liability on bond given to secure performance of contract.*

Breaches of subordinate requirements, which are specified in a contract for a public utility and bond for performance and are simply means to an end, cannot be made the basis of recovering the whole penalty after final completion or after cancellation by the obligee of the franchise. *Ib.*

3. *Liability of surety where performance of contract prevented by obligee.*

If within time for completion of a public utility authorized by ordinance, the municipality itself makes performance impossible, it cannot, under any system of law in Porto Rico or elsewhere, recover upon the bond for failure to perform. *Ib.*

BOUNDARIES.
See INDIANS, 6;
STATUTES, A 9;
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BURDEN OF PROOF.

As to denial of equal protection of law through classification.

The burden is on the one who complains of his classification under a

legal ordinance to show that he was denied equal protection of the law by such classification. *Bradley* v. *Richmond*, 477.

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Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196, distinguished in *New York Central & Hudson River R. R. Co.* v. *Hudson County*, 248.

Gulf, C. & S. F. Ry. v. *Texas*, 204 U. S. 403, distinguished in *Texas & New Orleans R. R. Co.* v. *Sabine Tram Co.*, 111.

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CONGRESS, POWERS OF.

1. *Exertion of power; effect on control of subject by States.*

An assertion of power by Congress over a subject within its domain must be treated as coterminous with its authority over the subject, and leaves no element of the subject to control of the State. *New York Central R. R.* v. *Hudson County*, 248.

2. *Exertion of power; effect on control of subject by State.*

Action by Congress on a subject within its domain under the commerce clause of the Constitution results in excluding the States from acting on that subject. *St. Louis, I. M. & S. Ry. Co.* v. *Edwards*, 265.

3. *Means of exercising power which Congress may adopt.*

Congress may adopt not only the necessary, but the convenient, means necessary to exercise its power over a subject completely within its power, and such means may have the quality of police regulations. (*Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196.) *Hoke* v. *United States*, 308.

4. *Interstate commerce; extent of power over.*

The power given to Congress by the Constitution over interstate commerce is direct, without limitation and far reaching. (*Hipolite Egg Co.* v. *United States*, 220 U. S. 45.) *Ib.*

See CONSTITUTIONAL LAW, 1, 4, 10;
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See CRIMINAL LAW, 1, 2.

CONSTITUTIONAL LAW.

1. *Commerce clause; power of Congress under; effect of exercise on power of State.*

Congress has always had power under the commerce clause of the Constitution to regulate the liability of interstate carriers to their employés for injuries; but until it did act, the subject was within the police power of the States. Since the passage of the Employers' Liability Act of 1908, that act is paramount and exclusive and so remains unless and until Congress shall again remit the subject to the States. (*Reid* v. *Colorado*, 187 U. S. 137.) *Michigan Central R. R. Co.* v. *Vreeland*, 59.

2. *Commerce clause; state interference; Arkansas Demurrage Statute of 1907 invalid.*

The so-called Demurrage Statute of 1907 of Arkansas requiring railroad companies to give notice to consignees of arrival of shipments and penalizing them for non-compliance is an unconstitutional interference with interstate commerce so far as interstate shipments are concerned. *St. Louis, I. M. & S. Ry. Co.* v. *Edwards*, 265.

3. *Commerce clause; burden on interstate commerce; validity of regulation of Mississippi Railroad Commission.*

A regulation of a state railroad commission that the railroad company must deliver freight to, or place the car in an accessible place for, the consignee of interstate shipments within twenty-four hours after arrival, without allowance for justifiable and unavoidable delay, is an unreasonable interference with and burden on interstate commerce and void under the commerce clause of the Federal Constitution; and so *held* as to a regulation to that effect of the

Mississippi Railroad Commission. (*Houston & Texas Central R. R.* v. *Mayes*, 201 U. S. 329.) *Yazoo & M. V. R. R. Co.* v. *Greenwood Grocery Co.*, 1.

4. *Commerce clause; privileges and immunities of citizens; validity of White Slave Act of 1910.*

The White Slave Traffic Act of June 25, 1910, c. 395, 36 Stat. 825, is a legal exercise of the power of Congress under the commerce clause of the Constitution and does not abridge the privileges or immunities of citizens of the States or interfere with the reserved powers of the States, especially those in regard to regulation of immoralities of persons within their several jurisdictions. *Hoke* v. *United States*, 308; *Athanasaw* v. *United States*, 326; *Bennett* v. *United States*, 333; *Harris* v. *United States*, 340.

See INTERSTATE COMMERCE.

5. *Contract obligation; scope of prohibition against.*

The contract clause prevents a State from impairing the obligation of a contract, whether it acts through the legislature or a municipality exercising delegated legislative power. *Grand Trunk Western Ry. Co.* v. *South Bend*, 544.

6. *Contract obligation; invalidity of ordinance repealing franchise.*

The ordinance of South Bend, Indiana, of 1868, permitting a railway company to lay a double track through one of its streets, and which had been availed of as to part of the distance, was a valid exercise of delegated legislative power, and no power to alter or repeal having been reserved, a subsequent ordinance repealing the franchise as to the double track was not a valid exercise of the police power to regulate the franchise, but an impairment of the contract and unconstitutional under the contract clause of the Constitution. *Ib.*

7. *Contract obligation; impairment of; regulation of use of franchise as.*

The ordinance of Portland prohibiting the using of locomotives and hauling of freight cars on one of its streets occupied by a railroad under a franchise, *held* not to be an impairment of the contract as to the locomotives, but not decided on this record, whether it is an impairment as to the hauling of freight cars. *Southern Pacific Co.* v. *Portland*, 559.

8. *Contract obligation; effect to violate, of penalty imposed for defending in bad faith against contract liability.*

To impose a penalty on those who unsuccessfully and not in good faith defend their liability on contracts does not violate the obligation

of the contract. *Quære* whether the State could impose such a penalty as to prior contracts as a mere consequence of unsuccessful defense. *Fraternal Mystic Circle* v. *Snyder*, 497.

9. *Contract obligation; effect to violate, of statute imposing penalty for defending in bad faith against contract liability.*

A state statute imposing on insurance companies an additional specified proportionate amount of the policy where there has been an unsuccessful defense interposed not in good faith, is not unconstitutional as violating the contract clause of the Constitution; and so *held* as to a statute of Tennessee to that effect. *Ib.*

See FRANCHISES, 7, 8.

10. *Due process of law; effect to deny, of finding without evidence.*

A finding without evidence is arbitrary and useless, and an act of Congress granting authority to any body to make a finding without evidence would be inconsistent with justice and an exercise of arbitrary power condemned by the Constitution. *Interstate Com. Comm.* v. *Louisville & Nashville R. R. Co.*, 88.

11. *Due process of law; validity of administrative orders.*

Administrative orders *quasi*-judicial in character are void if a hearing is denied; if the hearing granted is manifestly unfair; if the finding is indisputably contrary to the evidence; or if the facts found do not, as matter of law, support the order made. *Ib.*

12. *Due process and equal protection of the law; validity of municipal ordinance, enacted under delegated power, providing for sewerage.*

Where the charter gives the municipality power to enact through the mayor and council such rules and regulations for its welfare and government as they may deem best, and the highest court of the State has decided that an ordinance providing for a system of sewerage is within this delegation of power, this court will not declare such ordinance a violation of the due process or equal protection provisions of the Fourteenth Amendment, where the record does not show that the city was induced by anything other than the public good or that such was not its effect. *Hutchinson* v. *Valdosta*, 303.

13. *Due process and equal protection of law; effect to deny, of enforcement of police ordinance.*

One of the commonest exercises of the police power of the State or municipality is to provide for a system of sewers and to compel property owners to connect therewith, and this duty may be en-

forced by criminal penalties without violating the due process or equal protection clauses of the Fourteenth Amendment. *Ib.*

14. *Due process and equal protection of the law; power of State to classify.*
Under the Fourteenth Amendment, neither the State nor its municipality can confer or exercise arbitrary power in classifying for purpose of regulating, licensing or taxing. *Bradley* v. *Richmond*, 477.

15. *Due process and equal protection of the law; classification by State or municipality subject to guarantee.*
Whether the power of classifying be exercised by the State directly or by the municipality, it is the exercise of legislative discretion and subject to the guarantee of the Fourteenth Amendment. *Ib.*

16. *Due process and equal protection of the law; limitation on power of State to determine occupations subject to license and tax.*
The power of the State to determine what occupations shall be subject to license and tax is subject to no limitations save those of the due process and equal protection clauses of the Fourteenth Amendment, and nothing in the Fourteenth Amendment prohibits the State from delegating this power. (*Gundling* v. *Chicago*, 177 U. S. 183.) *Ib.*

17. *Due process and equal protection of the law; validity of classification of business for licensing.*
An ordinance imposing a license on business, dividing it into several classes and giving the power of classification to a committee of the council with power of review by the entire council, is not an arbitrary exercise of power within the prohibitions of the Fourteenth Amendment, and so *held* as to the banker's license tax of Richmond, Virginia. *Ib.*

18. *Due process and equal protection of the law; possible injustice by reviewing power not ground for holding ordinance unconstitutional.*
An ordinance imposing license taxes and authorizing classification which provides for a review will not be held unconstitutional because the reviewing power might approve of an unjust classification—such an objection would apply to any tribunal. *Ib.*

19. *Due process of law; right to judicial review to protect constitutional rights.*
If the right to be heard and obtain a review does not avail to protect rights under the Constitution, the right to judicial review remains

under the general principles of jurisprudence. (*Kentucky Railroad Tax Cases*, 115 U. S. 321.) *Ib.*

See JURISDICTION, A 9.

Equal protection of the laws. See Supra, 12–18;
COURTS, 5.

20. *Ex post facto laws; application of provision against.*
The prohibition in § 10 of Art. I of the Constitution against *ex post facto* laws is a restraint upon the legislative power of the States and concerns the making of laws and not their construction by the courts. *Ross* v. *Oregon*, 150.

21. *Ex post facto laws; application of provision; judicial decisions.*
While that prohibition is directed against legislative acts, and reaches every form in which the legislative power acts, and while a judicial decision is the act of an instrumentality of the State, if the purpose of that decision is not to prescribe a new law for the future but only to apply laws in force at the time to completed transactions, the ruling is a judicial and not a legislative act, and no Federal right or question is involved under the *ex post facto* provision of the Constitution. *Ib.*

22. *Fifth Amendment; application of; not obligatory on States.*
The Fifth Amendment is not obligatory upon the States or their judicial establishments, and regulates the procedure of Federal courts only. (*Twining* v. *New Jersey*, 211 U. S. 78.) *Ensign* v. *Pennsylvania*, 592.

23. *Fourteenth Amendment; application of.*
The provisions of the Fourteenth Amendment are generic in terms and are addressed not only to the States but to every person, whether natural or judicial, who is the repository of state power. *Home Tel. & Tel. Co.* v. *Los Angeles*, 278.

24. *Fourteenth Amendment; reach of.*
The reach of the Fourteenth Amendment is coextensive with any exercise by a State of power in whatever form exerted. *Ib.*

25. *Fourteenth Amendment; exercise of Federal judicial power under, to reach wrong done by state officer.*
Under the Fourteenth Amendment the Federal judicial power can redress the wrong done by a state officer misusing the authority of the State with which he is clothed; under such circumstances

inquiry whether the State has authorized the wrong is irrelevant. *Ex parte Young*, 209 U. S. 123, followed. *Barney* v. *New York*, 193 U. S. 430, distinguished. *Ib.*

26. *Fourteenth Amendment; acts embraced by.*
Acts done under the authority of a municipal ordinance passed in virtue of power conferred by the State are embraced by the Fourteenth Amendment. *Ib.*

27. *Fourteenth Amendment; power to enforce guarantees of.*
The power which exists to enforce the guarantees of the Fourteenth Amendment is typified by the immediate and efficient Federal right to enforce the contract clause of the Constitution as against those violating or attempting to violate its provision. *Ib.*

Governmental powers. *See* CONGRESS, POWERS OF.

Judicial power. *See* COURTS, 4, 5;
CRIMINAL LAW, 3.

Privileges and immunities of citizens. *See Supra*, 4.

28. *Searches and seizures; effect of requiring production of books of defunct corporation in the hands of an individual.*
Notwithstanding a corporation ceases to do business and transfers its books to an individual, the books retain their essential character and are subject to inspection and examination of the proper authorities and there is no unreasonable search and seizure in requiring their production before the grand jury in a Federal proceeding. (*Wheeler* v. *United States*, 226 U. S. 478.) *Grant* v. *United States*, 74.

29. *Self-incrimination; immunity from, and amnesty for crime, distinguished.*
There is a clear distinction between an amnesty for crime committed and the constitutional protection under the Fifth Amendment from being compelled to be a witness against oneself. *Heike* v. *United States*, 131.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTEMPT OF COURT.

See APPEAL AND ERROR, 3, 4.

CONTINUANCE.

See APPEAL AND ERROR, 5;
CONTRACTS, 10.

CONTRACTS.

1. *Construction; judicial; effect of in subsequent suit between same parties.*

The construction given to a contract by this court is either authoritatively controlling or conclusively persuasive in a subsequent suit between the same parties; and so held that the contentions relied on in this case as to the contract heretofore construed in *United States* v. *Harvey Steel Co.*, 196 U. S. 310, are, in the light of that decision, so frivolous that the judgment of the Court of Claims following it should be affirmed without further argument. *United States* v. *Harvey Steel Co.*, 165.

2. *Government's liability under contract for use of steel hardening process.*

United States v. *Harvey Steel Co.*, 196 U. S. 310, followed to effect that the Government is liable for royalties on the Harvey process even though every element thereof was not used on the plates involved in this action, and even though the contractor furnishing the plates and who used the process by permission of the United States was not specifically required to use it. *Ib.*

3. *Estoppel against enforcing contract for sale of land; effect of accepting lease.*

Accepting a lease of property described in a contract for sale thereof, does not amount to an estoppel against enforcing the contract, if the instrument recognizes an outstanding dispute and provides that rights on either side shall not be affected. *Gutierrez* v. *Graham*, 181.

4. *Option to purchase or contract for sale and purchase of land.*

Held that the instrument involved in this case was an actual contract for purchase and sale of the land described therein and not merely an option which expired at the time specified therein. *Ib.*

5. *Sale of ticket to place of entertainment; rights created by.*

The rule commonly accepted in this country from the English cases is that a ticket to a place of entertainment for a specified period does not create a right *in rem*. *Marrone* v. *Washington Jockey Club*, 633.

6. *Same.*

A contract binds the person of the maker, but does not create an interest in the property it concerns unless it also operates as a con-

veyance; a ticket of admission cannot have such effect as it is not under seal and by common understanding it does not purport to have that effect. *Ib.*

7. *Remedy of holder of ticket of admission on denial of rights thereunder.*
Specific performance of rights claimed under a mere ticket of admission to property cannot be enforced by self-help; the holder refused admission must sue for the breach. *Ib.*

8. *Contracts incidental to right of property; nature as conveyance or revocable license.*
While there might be an irrevocable right of entry under a contract incidental to a right of property in land or in goods thereon, where the contract stands by itself it must be a conveyance or a mere revocable license. *Ib.*

9. *Specific performance; effect of failure to comply with judgment of court.*
Suit for specific performance dismissed by the courts below for failure of the vendors to comply with the terms of the agreement and judgment affirmed by this court. *Brooklyn Mining Co.* v. *Miller*, 194.

10. *Specific performance; propriety of conditions imposed by court.*
The court below properly held appellant to an agreement made in open court as consideration for a continuance that no judgment that might meanwhile be obtained in another State on the same cause of action should be pleaded. *Ib.*

See BONDS AND UNDERTAKINGS; CONSTITUTIONAL LAW, 5–9; FRANCHISES; INDIANS, 1, 3; INTERSTATE COMMERCE, 4–8, 22–24; PRACTICE AND PROCEDURE, 1, 2; RESTRAINT OF TRADE, 9.

CONVEYANCES.

Warranty deeds; estoppel of grantor to deny title; application of rule.
The general rule, that a conveyance with warranty estops the grantor when he afterwards becomes the owner to deny the grantee's title, does not apply to a conveyance made by one *non sui juris* or that is contrary to public policy or statutory construction. *Starr* v. *Long Jim*, 613.

CORPORATIONS.

1. *Action by, to recover from promoters secret profits represented by stock.*
Where the true consideration of a syndicate purchase is concealed and the property is conveyed at a higher figure in shares of stock to a

corporation whose stock is held partly by the members of the syndicate and partly by others and the necessary increase of shares to pay for the property goes to some of the syndicate promoters as a secret profit, the corporation may maintain an action to require those obtaining the shares to surrender them for cancellation. *Davis* v. *Las Ovas Co.*, 80.

2. *Same.*

Fraud in the purchase of property which is to be conveyed to a corporation composed partly of those purchasing the property and partly by others may become operative against the corporation itself and give it a right to maintain an action against some or all of those guilty of the fraud to protect the innocent stockholders who bought in ignorance thereof. *Ib.*

3. *Same.*

A recovery in such an action is not defeated because the benefits would inure to some of the guilty as well as to the innocent stockholders. *Ib.*

4. *Same.*

The corporation may sue one or all of those participating in such a fraud, and there is no fatal omission of parties if all are not joined. *Ib.*

5. *Same.*

Where the fraud on a corporation resulted in the issuing of more stock than would otherwise have been necessary, the proper decree is to compel those who fraudulently obtained the additional stock to surrender it for cancellation. *Ib.*

6. *Foreign: personal liability; essentials to.*

In order to hold a corporation personally liable in a foreign jurisdiction it must appear that the corporation was within the jurisdiction and that process was duly served upon one of its authorized agents. *St. Louis S. W. Ry. Co.* v. *Alexander*, 218.

7. *Foreign; amenability to service of process.*

A corporation is not amenable to service of process in a foreign jurisdiction unless it is transacting business therein to such an extent as to subject itself to the jurisdiction and laws thereof. *Ib.*

8. *Foreign; what constitutes doing business for purposes of service of process.*

No all embracing rule has been laid down as to what constitutes the manner of doing business by a foreign corporation to subject it to

process in a given jurisdiction. Each case must be determined by its own facts. *Ib.*

9. *Same.*
The business done by a foreign corporation must be such in character and extent as to warrant the inference that it has subjected itself to the jurisdiction. *Ib.*

10. *Same.*
Where a railroad company establishes an office in a foreign district and its agents there attend to claims presented for settlement, as was done in this case, it is carrying on business to such an extent as to render it amenable to process under the law of that State. *Ib.*

11. *Foreign; service of process against; sufficiency of.*
Service of process on a resident director of a foreign corporation actually doing business in the State of New York is sufficient to give the court jurisdiction of the corporation. *Ib.*

See CONSTITUTIONAL LAW, 28;
PRIVILEGED COMMUNICATIONS.

COURT AND JURY.

See INSTRUCTIONS TO JURY;
WHITE SLAVE TRAFFIC ACT, 6.

COURTS.

1. *Determination of constitutional rights; considerations in.*
This court in dealing with rights created and conserved by the Federal Constitution looks to the substance of things and not the names by which they are labeled. *Crenshaw* v. *Arkansas*, 389.

2. *Federal; duty to settle bills of exceptions; application to District Court for Porto Rico.*
Section 953, Rev. Stat., confers authority on, and makes it the duty of, a judge of the Federal court to settle controversies concerning the bill of exceptions in a case tried before his successor who is, by reason of death or disability, unable to do so; and this applies to the judge of the District Court of the United States for Porto Rico. *Guardian Assurance Co.* v. *Quintana*, 100.

3. *Federal; interference with exercise of power necessary to public health.*
The Federal court will not interfere with the exercise of a salutary power and one necessary to the public health unless it is so pal-

pably arbitrary as to justify the interference. *Hutchinson* v. *Valdosta*, 303.

4. *Federal; right of resort to, when constitutional question involved; effect of involution of state constitution.*

One whose rights protected by a provision of the Federal Constitution which is identical with a provision of the state constitution are invaded by state officers claiming to act under a state statute, is not debarred from seeking relief in the Federal court under the Federal Constitution until after the state court has declared that the acts were authorized by the statute. *Home Tel. & Tel. Co.* v. *Los Angeles*, 278.

5. *Resort to, to obtain equal protection of the law.*

Where errors of administration in classifying for taxation can be corrected on review, one complaining that he was denied equal protection of the laws must avail of the method provided before applying to the Federal courts for protection under the Fourteenth Amendment. *Bradley* v. *Richmond*, 477.

6. *Precedents; force of decisions of Spanish courts on judgments of courts of Porto Rico.*

Decisions of the courts of Spain rendered after 1898, construing Spanish law applicable to possessions ceded to the United States, although entitled to great consideration, do not preclude the local court from reaching an independent judgment. *Cordova* v. *Folgueras*, 375.

See CONSTITUTIONAL LAW, 19, 22, 25;
EVIDENCE, 2, 3;
GOVERNMENTAL POWERS, 2;
INTERSTATE COMMERCE COMMISSION, 6;
JUDGMENTS AND DECREES, 3;
JURISDICTION;
PRESUMPTIONS;
PUBLIC LANDS, 18;
STATES, 2.

CRIMINAL APPEALS ACT.

See JURISDICTION, A 6;
STATUTES, A 10.

CRIMINAL LAW.

1. *Conspiracy under § 5440, Rev. Stat.; abuse in indictment for.*

Even if there may have been an abuse in some instances of indicting under § 5440 for conspiracy instead of for the substantive crime itself, liability for conspiracy is not taken away by its success, and in a case such as this, there does not appear to be any abuse. *Heike* v. *United States*, 131.

2. *Conspiracy under § 5440, Rev. Stat.; admissibility of evidence.*
Evidence showing that a conspiracy had continued before and after the periods specified in the indictment, held in this case not inadmissible against a defendant present at the various times testified to. *Ib.*

3. *Indictment; essentials to validity under Constitution.*
An indictment to be good under the Constitution and laws of the United States must advise the accused of the nature and cause of the accusation sufficiently to enable him to meet the accusation and prepare for trial and so that, after judgment, he may be able to plead the record and judgment in bar of further prosecution for the same offense. *Bartell* v. *United States*, 427.

4. *Indictment; obscene matter; sufficiency of reference.*
While ordinarily documents essential to the charge of crime must be sufficiently described to make known the contents thereof, matter too obscene or indecent to be spread on the record may be referred to in a manner sufficient to identify it and advise the accused of the document intended without setting forth its contents; and so held as to an indictment under § 3893, Rev. Stat., for sending obscene matter through the mails. *Ib.*

5. *Indictment; obscene matter; omission; right of defendant to bill of particulars.*
The accused may demand a bill of particulars if the reference in the indictment to a letter too obscene to be published does not sufficiently identify it, and in the absence of such demand a detailed reference is sufficient. *Ib.*

6. *Indictment; obscene matter; sufficiency of reference to.*
The accused is entitled to resort to parol evidence on a prosecution for sending obscene matter through the mail to show that the letter on which the indictment is based had been the subject-matter of a former prosecution, and therefore if the letter is too obscene to be spread on the record it is sufficient if a reference is made thereto in such detail that it may be identified. *Ib.*

7. *Insanity; sufficiency of instruction as to determination.*
An instruction that while the burden of proof is on defendant to establish the fact of insanity, the jury cannot convict if they had reasonable doubt as to his sanity, held proper and sufficient. (*Davis* v. *United States*, 160 U. S. 469.) *Matheson* v. *United States*, 540.

8. *Insanity; sufficiency of instruction as to what will relieve from criminal responsibility.*

The court properly instructed the jury as to the definition of insanity and as to what relieves defendant from criminal responsibility by giving the charge approved in *Davis* v. *United States*, 165 U. S. 373. *Ib.*

See APPEAL AND ERROR, 9;
WITNESSES, 1, 2.

DAMAGES.

Measure in case of loss of parent and of husband or wife.

A minor child sustains a loss from the death of a parent of a different kind from that of wife or husband from the death of the spouse; while the former is capable of definite valuation the latter is not. *Michigan Central R. R. Co.* v. *Vreeland*, 59.

See ACTIONS, 1; LOCAL LAW (Wash.);
EMPLOYERS' LIABILITY ACT, 6–10; PARTNERSHIP, 6;
RES JUDICATA, 3.

DEBAUCHERY.

See WHITE SLAVE TRAFFIC ACT, 4.

DEEDS.

See CONVEYANCES.

DEFENSES.

See CONSTITUTIONAL LAW, 9.

DELEGATION OF POWER.

See CONSTITUTIONAL LAW, 6, 10, 12, 16.

DEPARTMENTAL CONSTRUCTION.

See STATUTES, A 2.

DESCENT AND DISTRIBUTION.

Law governing; right of heir during lifetime of ancestor.

During the lifetime of the ancestor no heir has a vested right to inherit from him; and heirs only have such rights of inheritance as are given to them by the laws in force at their ancestor's death. *Cordova* v. *Folgueras*, 375.

See PUBLIC LANDS, 9, 13.

DISCHARGE IN BANKRUPTCY.
See APPEAL AND ERROR, 2;
BANKRUPTCY, 3–7.

DISTRICT OF COLUMBIA.
See JURISDICTION, A 5, 11;
PARTY WALL, 2.

DUE PROCESS OF LAW.
See CONSTITUTIONAL LAW, 10–19;
JURISDICTION, A 9.

ELECTION OF REMEDIES.
See PARTNERSHIP, 7.

ELECTIONS.

1. *Regularity of election in New Mexico.*

Following the Supreme Court of the Territory *held* that the act of the legislature was properly passed, and the petition for change of county seat, and the ballots were not irregular. *Gray* v. *Taylor*, 51.

2. *Statutory provisions; application of New Mexico statute relative to appointment of Registration Board.*

A statute requiring the appointment for certain elections of a Registration Board sixty days before election does not apply to a special election ordered by a subsequent act to take place within sixty days after presentation of a petition. *Ib.*

EMPLOYERS' LIABILITY ACT.

1. *Application of; territorial.*

The Employers' Liability Act extends to Porto Rico, as held in *American Railroad Company* v. *Birch*, 224 U. S. 547, and now *held* that the Safety Appliance Acts also extend to Porto Rico. *American R. R. Co.* v. *Didricksen*, 145.

2. *Application to Porto Rico dependent upon application thereto of Safety Appliance Acts.*

In view of the provisions of § 3 thereof, effect cannot be given to the Employers' Liability Act of 1908 in Porto Rico unless the Safety Appliance Acts referred to in § 3 are in force there also. *Ib.*

3. *Action under, differentiated from action under local law.*

An action brought under the Employers' Liability Act of 1908 by the personal representative of the person who was killed prior to the

passage of the act cannot be sustained as stating a cause of action under the law of the State, where that law gives the action to the parents. *Winfree* v. *Northern Pacific Ry. Co.*, 296.

4. *Action under; effect of death of injured party.*

At common law the right of action for an injury to the person is extinguished by the death of the party injured whether death be instantaneous or not. As the Employers' Liability Act of 1908 did not provide for any such survival the right was extinguished by death. *Michigan Central R. R. Co.* v. *Vreeland*, 59.

5. *Actions under; who may maintain; effect on right of time of death of party injured.*

The evident purpose, however, of Congress, in enacting the Employers' Liability Act of 1908 was to save a right of action to certain relatives dependent upon the employé wrongfully injured for the loss and financial damage resulting from his death, and there is no express or implied limitation of the liability to cases in which death was instantaneous. *Ib.*

6. *Damages provided by; effect of act to create new cause of action on death of party injured.*

This liability is for pecuniary damage only, and the statute should be construed in this respect as Lord Campbell's Act has been construed, not as granting a continuance of the right the injured employé had, but as granting a new and independent cause of action. *Ib.*

7. *Damages recoverable under; measure of.*

The pecuniary loss recoverable under the Employers' Liability Act of 1908 by one dependent upon the employé wrongfully killed must be a loss which can be measured by some standard, and does not include an inestimable loss such as that of society and companionship of the deceased or of care and advice in case of a husband for his wife. *Ib.*

8. *Damages recoverable under; measure of.*

There is no hard and fast rule by which pecuniary damages may be measured in all cases. *Ib.*

9. *Damages recoverable under; measure of.*

In this case the judgment under the Employers' Liability Act of 1908, of damages for death of a husband who survived the injury for a brief period, is reversed, because, although the wife was entitled

to maintain the action notwithstanding the death was not instantaneous, the damages were not properly estimated as the court charged the jury that they could consider the relation of husband and wife and the care and advice of the former to the latter. *Ib.*

10. *Damages recoverable under.*

Under the Employers' Liability Act of 1908 pecuniary damages only are recoverable and these do not include loss of society or companionship of a son to a parent. (*Michigan Central Railroad* v. *Vreeland, ante,* p. 59.) *American R. R. Co.* v. *Didricksen,* 145.

11. *Liability under; effect of brief survival of injured employé.*

The Employers' Liability Act of 1908 will not receive such a narrow interpretation as to defeat all liability because the injured employé survived the injury for a brief period. *Michigan Central R. R. Co.* v. *Vreeland,* 59.

12. *Parties to actions under; objections to; when overcome.*

Where the plaintiffs in an action under the Employers' Liability Act are the sole beneficiaries under the statute, a general verdict in their favor, without instructions on this point, overcomes the objection of lack of capacity to sue. *American R. R. Co.* v. *Didricksen,* 145.

13. *Retroactive effect.*

The Employers' Liability Act of 1908 introduced a new policy and radically changed existing law and will not be construed as a remedial statute having retrospective effect. *Winfree* v. *Northern Pacific Ry. Co.,* 296.

See CONSTITUTIONAL LAW, 1;
RES JUDICATA, 3;
STATUTES, A 3.

ENTRYMEN.

See PUBLIC LANDS.

EQUAL PROTECTION OF THE LAW.

See BURDEN OF PROOF;
CONSTITUTIONAL LAW, 12–18.

EQUITABLE LIENS.

See NOTICE.

ESTOPPEL.

See CONTRACTS, 3;
CONVEYANCES;
FRANCHISES, 7, 11;
INDIANS, 4;
INTERSTATE COMMERCE, 45, 46, 47, 49;
PLEADING;
RES JUDICATA.

EVIDENCE.

1. *Application of prohibition of § 9 of Bankruptcy Act of 1898.*

The prohibition in § 9 of the Bankruptcy Act of 1898 against offering testimony given by the bankrupt in accordance with the provisions of that section as evidence in any criminal proceeding applies only to the testimony and not to the schedules referred to therein. *Ensign* v. *Pennsylvania*, 592.

2. *Application of prohibition of § 9 of Bankruptcy Act; quære as to.*

Quære, and not necessary to determine in this case, whether the prohibition in § 9 of the Bankruptcy Act against using testimony of the bankrupt is not limited to criminal proceedings in the Federal courts and does not apply to such proceedings in the state courts. *Ib.*

3. *Application of § 860, Rev. Stat., limited to Federal courts.*

Rev. Stat., § 860, prohibiting the use of a pleading of a party or discovery of evidence by judicial proceeding against him in a criminal proceeding, while in force, was limited by its own terms to proceedings in the Federal courts and does not apply to one in the state court. *Ib.*

4. *Testimony within meaning of § 9 of Bankruptcy Act.*

Evidence showing the results of an expert examination of the bankrupt's books is not "testimony" within the meaning of § 9 of the Bankruptcy Act of 1898. *Ib.*

See ADVERSE POSSESSION;
BURDEN OF PROOF;
CRIMINAL LAW, 2, 6;
INSTRUCTIONS TO JURY;
INTERSTATE COMMERCE, 28, 47;
INTERSTATE COMMERCE COMMISSION, 1–5;
RAILROADS, 2;
RES JUDICATA;
RESTRAINT OF TRADE, 1;
WHITE SLAVE TRAFFIC ACT, 5, 6;
WITNESSES.

EXCEPTIONS.

See PRACTICE AND PROCEDURE, 5.

EXECUTIVE ORDERS.
See APPEAL AND ERROR, 1;
CONSTITUTIONAL LAW, 11.

EXEMPTION FROM LIABILITY.
See INTERSTATE COMMERCE, 5, 22.

EX PARTE PROCEEDINGS.
See ACTIONS, 2.

EX POST FACTO LAWS.
See CONSTITUTIONAL LAW, 20, 21.

EXPRESS COMPANIES.
See INTERSTATE COMMERCE, 26.

EXTORTION.
See BANKRUPTCY, 1.

FACTS.
See PRACTICE AND PROCEDURE, 6–9, 11, 15.

FEDERAL QUESTION.

1. *Determination of existence.*
Whether the case is one arising under the laws of the United States must be determined upon the statements in the petition itself and not upon questions subsequently arising in the progress of the case. (*Macfadden* v. *United States*, 213 U. S. 288.) *Lovell* v. *Newman*, 412.

2. *Determination of involution.*
A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws. There must be a controversy respecting the validity, construction or effect of such a law upon the determination of which the result depends. *Ib.*

3. *Application of anti-pass provision of Hepburn Act a Federal question.*
Whether the anti-pass provision of the Hepburn Act prohibits a carrier from giving free interstate transportation to employés of the Railway Mail Service when not on duty but traveling for their own benefit, is a Federal question. *Southern Pacific Co.* v. *Schuyler*, 601.

4. *Relation of carrier and passenger a non-Federal question although carriage is in violation of Hepburn Act.*

Whether the relation of carrier and passenger arises in the case of one traveling gratuitously in violation of the anti-pass provision of the Hepburn Act, in the absence of any Federal statute regulating the matter, is a question not of Federal, but of state, law. *Ib.*

5. *Public lands; claim based on statute governing.*

Where defendant's claim to land formerly part of the public domain is based on his grantor's rights under the statutes governing the disposition thereof, and sustained by the construction given to such statutes by the state court, the decision against the plaintiff involves the denial of a Federal right as asserted by him. *Wadkins* v. *Producers Oil Co.*, 368.

6. *Violation of rights under provision of state constitution identical to one in Federal; effect to infringe Federal right.*

A violation of defendant's rights under a provision in the state constitution which is identical to one in the Federal Constitution which is only obligatory on the Federal courts, does not infringe a Federal right. *Ensign* v. *Pennsylvania*, 592.

7. *When Federal question involved non-essential to decision; disposition of writ of error.*

Where the decision of the state court adverse to plaintiff in error proceeds upon two independent grounds, one of which does not involve a Federal question and is sufficient to support it, the writ of error will be dismissed or affirmed according to circumstances. *Southern Pacific Co.* v. *Schuyler*, 601.

See CONSTITUTIONAL LAW, 21;
INTERSTATE COMMERCE, 8;
JURISDICTION, A 9.

FERRIES.

See INTERSTATE COMMERCE, 10, 11.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 22, 29.

FINDINGS OF FACT.

See BANKRUPTCY, 9;
CONSTITUTIONAL LAW, 10, 11;
INTERSTATE COMMERCE COMMISSION;
PRACTICE AND PROCEDURE, 6–9, 11, 15.

FOREIGN COMMERCE.

See INTERSTATE COMMERCE, 12–17, 37.

FOREIGN CORPORATIONS.

See CORPORATIONS, 6–11;
INTERSTATE COMMERCE, 3.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 12–17, 23–27;
COURTS, 5;
JURISDICTION, A 9.

FRANCHISES.

1. *Ordinance conferring street franchise as contract.*

An ordinance conferring a street franchise, passed by a municipality under legislative authority, creates a valid contract binding and enforceable according to its terms. (*Louisville* v. *Cumberland Telephone Co.*, 225 U. S. 430.) *Grand Trunk Western Ry. Co.* v. *South Bend*, 544.

2. *To operate double track railway; power of municipality to abrogate as to one of the tracks.*

A franchise to maintain and operate a double track railway is an entirety, and if valid the municipality cannot abrogate it as to one of the tracks, either as to all or as to a part of the distance for which it was granted. *Baltimore* v. *Trust Company*, 166 U. S. 673, distinguished. *Ib.*

3. *To use streets of municipality; regulation of; when repealable.*

While a validly granted franchise to use streets of a municipality may be regulated as to its use by subsequent ordinances, or repealed if its operation becomes injurious to public health or morals, the franchise, if not injurious to public health or morals, cannot be repealed and destroyed. *Ib.*

4. *To lay tracks in street; use of tracks; when legalized.*

Tracks laid in a street under legislative authority become legalized, and when used in the customary manner cannot be treated as unlawful either in maintenance or operation. *Ib.*

5. *Police power over.*

The police power of the State cannot be bartered away; but it cannot be used to abrogate a valid and innocuous franchise. *Ib.*

6. *Police power to destroy; inconvenience as basis for exercise.*

Inconvenience natural to the proper use of a properly granted franchise

cannot be made the basis of exercising the police power to destroy the franchise. *Ib.*

7. *Reservations in ordinance granting; estoppel of grantee to deny right of municipality to act under.*

Where, as in this case, a municipal ordinance, granting a franchise to use streets as authorized by the state law, expressly reserves to the city the power to make or alter regulations and to prohibit the use of a specified motive power, the grantee cannot accept it and afterwards claim that, as the state law only authorized the designation of streets, the municipality cannot exert the power reserved to prohibit the specified motive power without impairing the contract. *Southern Pacific Co.* v. *Portland*, 559.

8. *To railroad to lay and operate tracks in street, includes what; power of municipality to regulate.*

A franchise given by a municipality under state authority to a railroad to lay and operate tracks in a street includes the right to haul both passenger and freight cars, and a reserved power to regulate cannot be availed of to prohibit the hauling of freight cars and defeat the franchise given by the State and to that extent impair the contract under which the railroad was constructed. *Ib.*

9. *Regulation of use; when provisions separable.*

Where under its reserved powers the municipality attempts to regulate a franchise to use the streets both as to nature of motive power and cars operated, the provisions are separable and do not stand or fall together. (*Laclede Gas Co.* v. *Murphy*, 170 U. S. 99.) *Ib.*

10. *Regulation of; power of municipality.*

While the power to regulate a franchise does not authorize a prohibition that destroys it, the municipality may legislate in the light of facts and conditions. *Ib.*

11. *Conditions of use; estoppel of grantee to deny validity.*

The grantee of a franchise to use the streets coupled with conditions cannot avail of the benefits and deny the validity of the conditions, or claim that the exercise of the expressly reserved power is a violation of the contract clause of the Constitution. *Ib.*

See CONSTITUTIONAL LAW, 6.

FRAUD.

See BANKRUPTCY, 8, 9;
CORPORATIONS, 2-5;
PUBLIC LANDS, 8.

FREE TRANSPORTATION.

See RAILROADS, 1, 2, 5, 10.

GOVERNMENTAL POWERS.

1. *Federal and state; how to be exercised.*

While our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, we are one people and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. *Hoke* v. *United States*, 308.

2. *Judicial inquiry and legislation differentiated.*

The purpose of a judicial inquiry is to enforce laws as they are at present; legislation looks to the future and changes existing conditions by making new laws to be applicable hereafter. (*Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 226.) *Ross* v. *Oregon*, 150.

3. *Power to regulate implies what.*

The power to regulate implies the existence and not the destruction of the thing to be controlled. *Grand Trunk Western Ry. Co.* v. *South Bend*, 544.

See CONGRESS, POWERS OF;
CONSTITUTIONAL LAW, 6, 25;
STATUTES, A 8.

GRAND JURY.

See PRIVILEGED COMMUNICATIONS, 1.

HABEAS CORPUS.

1. *Functions of; not that of writ of error.*

The writ of *habeas corpus* is not intended to serve the office of a writ of error even after verdict, and for stronger reasons is not available before trial except in rare and exceptional cases. *Johnson* v. *Hoy*, 245.

2. *Remedies to be exhausted before resort to writ.*

The orderly course of a trial should be pursued and usual remedies exhausted even where petitioner attacks the constitutionality of the act under which he is held. (*Glasgow* v. *Moyer*, 225 U. S. 420.) *Ib.*

3. *Availability of writ where basis is excessive bail and the bail has been furnished.*

Where petitioner bases his petition on the ground that excessive bail is required, and before decision on the writ furnishes the bail, as the

court can only grant the same relief that the writ was intended to afford, the appeal from the judgment denying the writ must be dismissed. *Ib.*

HEALTH REGULATIONS.
See COURTS, 3.

HEIRS.
See DESCENT AND DISTRIBUTION.

HEPBURN ACT.
See FEDERAL QUESTION, 3, 4;
INTERSTATE COMMERCE, 28, 32–35, 45;
RAILROADS, 5, 6, 10.

HOMESTEADS.
See PUBLIC LANDS, 9–13.

HUSBAND AND WIFE.
See DAMAGES;
EMPLOYERS' LIABILITY ACT, 7, 9;
PUBLIC LANDS, 9, 11, 13.

IMMUNITY FROM PROSECUTION.
See WITNESSES, 1, 2.

IMMUNITY FROM SUIT.
See PORTO RICO, 2–6.

IMPAIRMENT OF CONTRACT OBLIGATION.
See CONSTITUTIONAL LAW 5–9;
FRANCHISES, 7, 8;
PRACTICE AND PROCEDURE, 1, 2.

IMPORTS.
See INTERSTATE COMMERCE, 18–21.

INDIAN LANDS.
See PUBLIC LANDS, 26–28.

INDIAN RESERVATIONS.
See PUBLIC LANDS, 4, 17.

INDIANS.

1. *Agreement as to division and allotment of lands; how to be construed.*
An agreement as to division and allotment of lands between the Secretary of the Interior and chiefs representing Indians which is informal in terms and is afterwards ratified by Congress should be construed so as to confer upon the Indians the full measure of benefit intended. *Starr* v. *Long Jim*, 613.

2. *Allotment; method dictated by best interests of Indians.*
The best interests of the Indians do not always require that they should be allotted lands in fee rather than by having them held in trust by the Government for them. *Ib.*

3. *Allotment of lands in Columbia and Colville reservations; construction of agreement as to.*
The agreement with Chief Moses and others of July 7, 1883, as to distribution of lands in the Columbia and Colville reservations and the act of July 4, 1884, 23 Stat. 79, validating it, and the subsequent acts relating thereto, were properly construed by the Secretary of the Interior to the effect that the Government held the land in trust for the Indian allottees for a period of ten years and without power of alienation meanwhile except by consent of the Secretary. *Ib.*

4. *Estoppel of one conveying by warranty deed contrary to law to deny validity of deed.*
An allottee Indian, who conveys by warranty deed before patent and during the period of suspension of alienation without the consent of the Secretary, acts contrary to the policy of the law and is not estopped to deny the validity of the deed after patent, and the grantee acquires no rights. *Ib.*

5. *Reservations; surveys; consideration to be given action of Land Department in approving survey.*
The action of the Land Department in approving a survey of a treaty reservation must be given strong consideration, but is not always controlling, and *quære* whether the rule that such action should only be disturbed for clear and convincing reason applies when the Government is proceeding in behalf of the Indians. *Northern Pacific Ry. Co.* v. *United States*, 355.

6. *Yakima Indians; boundary of reservation defined.*
The western boundary of the reservation of the Yakima Indians reserved by treaty of 1855 is defined by the greater boundaries of nature which the Indians understood and estimated, and so *held*

that the main ridge of the Cascade Mountains is the western boundary and not the inferior ridges and spurs. *Ib.*

See TREATIES.

INDICTMENT AND INFORMATION.

See CRIMINAL LAW, 1–6; RESTRAINT OF TRADE, 8;
JURISDICTION, A 6; VARIANCE, 2, 4.

INFRINGEMENT OF PATENT.

See RESTRAINT OF TRADE, 5.

INHERITANCE.

See DESCENT AND DISTRIBUTION.

INSANITY.

See CRIMINAL LAW, 7, 8;
WITNESSES, 3.

INSTRUCTIONS TO JURY.

As to testimony corroborating that of accomplice.

Instructions to the jury that there is testimony tending to corroborate the testimony of a witness charged with being an accomplice and that it is for the jury to consider the force and value of the testimony and the weight to be given to it, is sufficient to properly leave the matter with the jury. *Bennett* v. *United States*, 333.

See CRIMINAL LAW, 7, 8;
WHITE SLAVE TRAFFIC ACT, 7.

INSURANCE.

See CONSTITUTIONAL LAW, 9.

INTERSTATE COMMERCE.

1. *Embraces what.*

Commerce among the States consists of intercourse and traffic between their citizens and includes the transportation of persons as well as property. *Hoke* v. *United States*, 308.

2. *Embraces what; negotiation for sales of goods as.*

The negotiation of sales of goods which are in another State, for the purpose of introducing them in the State in which the negotiation is made, is interstate commerce. (*Robbins* v. *Shelby County Taxing District*, 120 U. S. 489.) *Crenshaw* v. *Arkansas*, 389,

3. *Carmack Amendment; liability of initial carrier; essentials to action against.*

Under the Carmack Amendment the initial carrier is not liable to suit in a foreign district unless it is carrying on business in the sense which would render other foreign corporations amenable to process. *St. Louis S. W. Ry. Co.* v. *Alexander*, 218.

4. *Contracts in; Carmack Amendment; effect on state regulation.*

The Carmack Amendment manifested the purpose of Congress to bring contracts for interstate shipments under one uniform rule or law and therefore withdraw them from the influence of state regulation. (*Adams Express Co.* v. *Croninger*, 226 U. S. 491.) *Kansas City Southern Ry. Co.* v. *Carl*, 639.

5 *Contracts; validity of agreement to release carrier for part of loss due to negligence.*

An agreement to release a carrier for part of a loss of an interstate shipment due to negligence is no more valid than one for complete exemption, neither is such a contract any more valid because it rests on consideration than if it were without consideration; but a declared value by the shipper for the purpose of determining the applicable rate based upon valuation is not an exemption from either statutory or common-law liability. *Ib.*

6. *Contracts for unusual service; validity dependent upon publishing of rates.*

A carrier cannot contract with a particular shipper for an unusual service unless he make and publish a rate for such service equally for all. (*Chicago & Alton Ry.* v. *Kirby*, 225 U. S. 155.) *Ib.*

7. *Contracts; validity and conclusiveness of valuation agreement.*

In this case the valuation agreement of the contract was expressed in usual form, was conclusive on the shipper, and does not offend the Carmack Amendment. *Ib.*

8. *Contracts; law governing determination of validity of stipulations in.*

The Carmack Amendment has withdrawn the determination of validity of all stipulations in interstate shipping contracts from state law and legislation. Under that amendment the validity of a provision that suit must be brought within a specified period is a Federal question to be settled by the general common law. *Missouri, K. & T. Ry. Co.* v. *Harriman*, 657.

9. *Federal and state powers over; paramount and exclusive power of Congress.*

The operation at one time of both the power of Congress and that of

the State over a matter of interstate commerce is inconceivable; the execution of the greater power takes possession of the field and leaves nothing upon which the lesser power can operate. *New York Central R. R.* v. *Hudson County*, 248.

10. *Ferries as instrumentalities of; power of States to regulate.*
Congress, by passing the Act to Regulate Commerce, has taken control of interstate railroads, and having expressly included ferries used in connection therewith, has destroyed the power of the States to regulate such ferries. *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, distinguished. *Ib.*

11. *Ferries as instrumentalities of; power of State to regulate.*
No portion of the business of a ferry which is part of an interstate railway is under the control of the State; and so *held* that the state authorities have no power to regulate the fare of passengers, whether railroad passengers or not, on the ferry between Weehawken, New Jersey, and New York City, known as the West Shore Ferry and operated by the New York Central & Hudson River Railroad. *Ib.*

12. *Foreign and intrastate commerce distinguished.*
Shipments of lumber on local bills of lading from one point in a State to another point in the same State destined from the beginning for export, under the circumstances of this case, are foreign and not intrastate commerce. *Southern Pacific Terminal* v. *Interstate Commerce Commission*, 219 U. S. 498; *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101, followed. *Gulf, Colorado & Santa Fe Ry.* v. *Texas*, 204 U. S. 403, distinguished. *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 111.

13. *Foreign commerce; when merchandise acquires character of.*
Merchandise destined for export acquires the character of foreign commerce as soon as actually started for its destination or delivered to a carrier for transportation, *Coe* v. *Errol*, 116 U. S. 517, and while the transportation should be continuous it need not be by or through the initial carrier. *Ib.*

14. *Foreign or intrastate commerce; determination of character as.*
It is the nature of the traffic and not its accidents which determines whether it is intrastate or foreign. *Ib.*

15. *Foreign or intrastate commerce; when of former character.*
Lumber ordered, manufactured and shipped for export, through a port where there is no local trade, held in this case to be foreign and not intrastate commerce although shipped on local bills of lading from

a point in Texas to Sabine, Texas, and there shipped to its final destination by a vessel not designated before arrival and after waiting full time allowed on the wharves before shipment. *Ib.*

16. *Foreign commerce; continuity of transportation to fix character.*
A continuous line of shipments through the same port to foreign ports, of merchandise in which there is no local trade, shows a continuity of transportation in which the delay and transshipment does not make any break that deprives it of its foreign character. (*Swift & Co.* v. *United States*, 196 U. S. 375.) *Ib.*

17. *Foreign and not intrastate commerce; character of shipment of lumber.*
In this case *held* that shipments of lumber although on local bills were foreign commerce and subject only to the rates established by the railroads and filed with the Interstate Commerce Commission and that the railroad company was not subject to penalties for extortion for non-compliance with a rate established by the state law. *Ib.*

18. *Intoxicating liquors; power of State to impose license for regulating sale of.*
Under the Wilson Act of August 8, 1890, 26 Stat. 313, a State may impose a license for regulating the sale of liquor in original packages brought from foreign countries, as well as that brought from other States. *De Bary & Co.* v. *Louisiana*, 108.

19. *Intoxicating liquors; materiality of point of origin where statute regulating sales refers to "all" liquors.*
Where a statute refers to "all" liquors transported into a State or Territory the point of origin is immaterial and the law applies to liquors alike from other States and from foreign countries. *Ib.*

20. *Intoxicating liquors; Wilson Act; power conferred on States by.*
The intent of Congress in enacting the Wilson Act was to give the several States power to deal with all liquors coming from outside to within their respective limits, and this purpose would be defeated if the act were construed so as not to include liquors from foreign countries as well as from other States. *Ib.*

21. *Intoxicating liquors; Wilson Act; construction in respect of discriminations in application.*
An act of Congress, such as the Wilson Act, will not be so construed as to confer upon foreign producers of an article a right specifically denied to domestic producers of that article. *Ib.*

22. *Limitation of liability under Carmack Amendment.*
The liability imposed by the Carmack Amendment is that of the common law and it may be limited or qualified by a special contract with the shipper limiting it in a just and reasonable manner except exemption from loss or responsibility due to negligence; and so *held* as to a stipulation that suit be brought within ninety days from the happening of the loss. *Missouri, K. & T. Ry. Co.* v. *Harriman*, 657.

23. *Limitation of liability by initial carrier; effect on connecting carrier.*
Under the Carmack Amendment a stipulation for limitation of liability, if unauthorized as to the initial carrier, is ineffective also as to a connecting carrier, and if valid as to the initial carrier, is valid as to a connecting carrier. *Kansas City Southern Ry. Co.* v. *Carl*, 639.

24. *Limitation of liability; effect of Carmack Amendment.*
The Carmack Amendment does not forbid a limitation of liability in case of loss or damage to a valuation agreed upon for the purpose of determining which of two alternative lawful rates shall apply to a particular shipment. *Ib.*

25. *Liability of initial carrier for default of connecting carrier.*
Under the Carmack Amendment an interstate carrier comes under liability not only for its own default but also for loss and damage upon the line of any connecting carrier. (*Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186.) *Ib.*

26. *Limitation of liability; validity of agreement under Carmack Amendment.*
Whether void or not under the state statute, a provision in an express receipt limiting recovery in case of loss or negligence, is valid as to interstate shipments under the Carmack Amendment if fairly made for the purpose of applying to the shipment the lower of two rates based upon valuation. (*Adams Express Co.* v. *Croninger*, 226 U. S. 491.) *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 469.

27. *Limitation as to time of suit; effect of state law to violate Carmack Amendment.*
Limitation of the time within which to bring actions is a usual and reasonable provision and there is nothing in the policy of the Carmack Amendment that is violated thereby. *Missouri, K. & T. Ry. Co.* v. *Harriman*, 657.

28. *Rate regulation; hearing to which carrier entitled.*
The Act to Regulate Commerce, as amended by the Hepburn Act, gives a right to a full hearing on the subject of rates, and that confers the privilege of introducing testimony and imposes the duty of deciding in accordance with the facts proved. *Interstate Com. Comm.* v. *Louisville & Nashville R. R. Co.*, 88.

29. *Rates; advance of; presumptions as to reasons for.*
When rail rates are advanced with the disappearance of water competition no inference adverse to the railroad can be drawn, but when the old rates had been maintained for several years after such disappearance, there is a presumption, if the rates are raised, that the advance is made for other reasons. *Ib.*

30. *Rates; duty of carrier to charge applicable rate.*
Under the Act to Regulate Commerce a carrier who has filed rate sheets which show two rates based upon valuation is legally bound to charge the applicable rate. *Kansas City Southern Ry. Co.* v. *Carl*, 639

31. *Rates; presumption of knowledge as to.*
Where the duly filed tariff sheets show different rates based on valuation, the shipper must take notice of the applicable rate and actual want of knowledge is no excuse; his knowledge is conclusively presumed. *Ib.*

32. *Rates; validity under Carmack Amendment of establishment of rates based on value of shipment.*
It is not unreasonable, and in fact is the method approved by the Interstate Commerce Commission, in graduating freight according to value, to divide the particular subject of transportation into two classes—those above and those below a fixed amount; and the establishment of two cattle rates, one based on a maximum fixed value and the other on the actual value, is not a violation of the Carmack Amendment of the Hepburn Act. *Missouri, K. & T. Ry. Co.* v. *Harriman*, 657.

33. *State power to burden; effect of action by Congress.*
As applied to interstate shipments, the State cannot now impose penalties for delay in delivery to consignee, as Congress has acted on that subject by the passage of the Hepburn Act. (*Chicago, R. I. & Pac. Ry. Co.* v. *Hardwick Elevator Co.*, 226 U. S. 426.) *St. Louis, I. M. & S. Ry. Co.* v. *Edwards*, 265.

34. *State regulation of delivery of cars superseded by Hepburn Act.*
Since Congress has acted, by passing the Hepburn Act of June 29, 1906, in regard to delivery of cars for interstate shipments, all state legislation on that subject has been superseded. (*Chicago, R. I. & Pac. Ry.* v. *Hardwick Elevator Co.*, 226 U. S. 426.) *Yazoo & M. V. R. R. Co.* v. *Greenwood Grocery Co.*, 1.

35. *State interference; validity of statute regulating the furnishing of cars.*
A provision in a state statute that interstate railroads shall furnish cars for interstate shipments that regulates the furnishing of cars is invalid by reason of the Hepburn Act but if it only means that there shall be no discrimination against interstate shipment it might not invalidate an act otherwise valid as to intrastate shipments. *Hampton* v. *St. Louis, I. M. & S. Ry. Co.*, 456.

36. *Same.*
The fact that an act requiring railroads to furnish cars includes no exceptions is not conclusive of its meaning and intent; and an act cannot be construed as not permitting any exceptions where, as in this case, the state court has held that the penalties are enforceable only in an action at law, and that as such a provision is declaratory of the common law, any reasonable excuse may be interposed. *Ib.*

37. *State interference by exercise of police power.*
The police power of a State cannot obstruct foreign or interstate commerce beyond the necessity for its exercise; nor can objects not within its scope be secured under color of the police power at the expense of the protection afforded by the Federal Constitution. (*Railroad Co.* v. *Husen*, 95 U. S. 465.) *Crenshaw* v. *Arkansas*, 389.

38. *State interference; tax on solicitors of orders as.*
While a tax on peddlers who sell and forthwith deliver goods is within the police power of the State, a tax on one who travels and solicits orders for goods to be shipped from without the State is a burden on interstate commerce and unconstitutional. *Emert* v. *Missouri*, 156 U. S. 296, distinguished. *Ib.*

39. *State interference; tax on solicitors of orders as unconstitutional burden.*
A state statute, imposing a license on those who solicit orders, from samples which they do not sell, of articles to be shipped from another State and which are afterwards delivered to the purchaser by the manufacturer, is an unconstitutional burden on interstate commerce beyond the police power of the State, and cannot be

justified as a license tax on peddlers even though the state statute defines the persons soliciting the orders as peddlers; and so *held* as to the law of Arkansas of April 1, 1909, regulating the sale of certain specified articles within the State. *Crenshaw* v. *Arkansas*, 389; *Rogers* v. *Arkansas*, 401.

40. *State taxation of; supremacy of Federal power.*
The denial to the States of the power to tax articles actually moving in interstate commerce rests upon the supremacy of the Federal power to regulate that commerce, and its postulate is necessary freedom of that commerce from the burden of local taxation. *Bacon* v. *Illinois*, 504.

41. *State taxation of; immateriality of citizenship of owner of property taxed.*
The State cannot impose a tax upon articles moving in interstate commerce on the ground that such articles belong to its own citizens. They, as well as others, are under the protection of the commerce clause of the Constitution. *Ib.*

42. *State taxation of; test of exemption.*
The test of exemption from state taxation is not citizenship of the owner but whether or not the articles attempted to be taxed are actually moving in interstate commerce. *Ib.*

43. *State taxation of goods in course of interstate transportation.*
Property brought from another State and withdrawn from the carrier and held by the owner with full power of disposition becomes subject to the local taxing power notwithstanding the owner may intend to ultimately forward it to a destination beyond the State. *Ib.*

44. *State taxation of interstate shipment while in original package.*
Goods within the State may be made the subject of a non-discriminatory tax though brought from another State and held by the consignee in the original package. (*Woodruff* v. *Parham*, 8 Wall. 123.) *Ib.*

45. *Valuation of shipment for purpose of obtaining lower rate; estoppel created by; Carmack Amendment.*
American Express Co. v. *Croninger*, 226 U. S. 491, and *Kansas City Southern Ry.* v. *Carl*, *ante*, p. 637, followed to effect that the shipper who values his goods for the purpose of obtaining the lower of two duly published rates, based on valuation, is estopped from recovering a greater amount than his own valuation; and that the

Carmack Amendment to the Hepburn Act of 1906 expresses the policy of Congress on this subject and supersedes all state legislation thereon. *Missouri, K. & T. Ry. Co.* v. *Harriman*, 657.

46. *Valuation of shipment for purpose of obtaining lower rate; estoppel created by.*
A shipper who declares either voluntarily or on request the value of the article shipped so as to obtain the lower of several rates based on valuation is estopped upon plain principles of justice from recovering any greater amount. *Kansas City Southern Ry. Co.* v. *Carl*, 639.

47. *Valuation to obtain lower rate; admissibility of evidence to recover larger amount as true value.*
A shipper, who has declared a value to get the lower of two rates, cannot be allowed to introduce evidence *aliunde* so as to recover a larger amount as the true value; it would encourage undervaluations and result in illegal preferences and discriminations. *Ib.*

48. *Valuation and rate; interdependency of.*
An administrative rule of the Interstate Commerce Commission is that valuation and rate are dependent each upon the other. *Ib.*

49. *Valuation of shipment; effect of misrepresentation.*
The reasonable and just consequence of misrepresentation of value to get the lower rate of shipment is not that the shipper recover nothing but that he is estopped to recover more than the value declared to obtain the rate. *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 469.

50. *Valuation of shipment; limitation of liability; effect of acceptance of receipt.*
A shipper by accepting a receipt reciting that the carrier is not to be held liable beyond a specified amount at which the property is thereby valued unless a different value than that is so stated, and thus obtaining a lower rate than that which he would have been obliged to pay had he declared the full value, declares and represents that the value does not exceed the specified amount. *Ib.*

51. *Valuation of shipment; distinction between declared and agreed.*
There is no substantial distinction between a value stated on inquiry and one agreed upon or declared voluntarily. *Ib.*

52. *Women, transportation of; power of Congress to regulate.*
While women are not articles of merchandise, the power of Congress to regulate their transportation in interstate commerce is the same,

and it may prohibit such transportation if for immoral purposes. *Hoke* v. *United States*, 308.

53. *Same.*

The right to be transported in interstate commerce is not a right to employ interstate transportation as a facility to do wrong, and Congress may prohibit such transportation to the extent of the White Slave Traffic Act of 1910. *Ib.*

See CONGRESS, POWERS OF, 2, 4; CONSTITUTIONAL LAW, 1–4; FEDERAL QUESTION, 3, 4; RAILROADS, 2, 5; RESTRAINT OF TRADE; WHITE SLAVE TRAFFIC ACT, 1–6.

INTERSTATE COMMERCE COMMISSION

1. *Jurisdiction; evidence essential to findings.*

The legal effect of evidence is a question of law, and a finding without evidence is beyond the jurisdiction of the Commission. *Interstate Com. Comm.* v. *Louisville & Nashville R. R. Co.*, 88.

2. *Rates; power of Commission to alter.*

Under the Act to Regulate Commerce the carrier retains the primary right to make rates, and the power of the Commission to alter them depends upon the existence of the fact of their unreasonableness, and, in the absence of evidence to that effect, the Commission has no jurisdiction. *Ib.*

3. *Rates; validity of order establishing; sufficiency of basis for order.*

Where the party affected is entitled to a hearing, the Interstate Commerce Commission cannot base an order establishing a rate on the information which it has gathered for general purposes under the provisions of § 12 of the act. The order must be based on evidence produced in the particular proceeding. *Ib.*

4. *Rate regulation; validity of order of Commission.*

In this case, the Interstate Commerce Commission having found, after taking evidence, that the new rates were excessive and that the through rate which exceeded the sum of the locals should have been lowered, instead of the locals being raised to equal the through rate, this court holds that the finding, having been based on evidence, should not be disturbed and that the order of the Commission was proper. *Ib.*

5. *Rate proceedings; evidence; determination of weight.*

The value of evidence in rate proceedings varies, and the weight to be given to it is peculiarly for the body experienced in regard to rates and familiar with the intricacies of rate-making. *Ib.*

6. *Rate regulation by; validity of order; interference by courts.*
In this case the order of the Commission restoring local rates that had been in force many years between New Orleans and neighboring cities and making a corresponding reduction in through rates was not arbitrary but was sustained by substantial, although conflicting, evidence, and the courts cannot settle such a controversy or put their judgment against that of the Commission which is the rate-making body. *Ib.*

See INTERSTATE COMMERCE, 48.

INTOXICATING LIQUORS.

See INTERSTATE COMMERCE, 18–21.

INTRASTATE COMMERCE.

See INTERSTATE COMMERCE, 12, 14, 15.

ISLANDS.

See PUBLIC LANDS, 15, 23, 24.

JUDGMENTS AND DECREES.

1. *Decree; effect to be given to.*
The decree in a case is the dominant act and cannot be given a greater effect than it purports to have and than would be warranted by the opinion that the court finally reached. *Baxter* v. *Buchholz-Hill Co.*, 637.

2. *Decree of dismissal without prejudice; effect as decree on merits.*
The fact that a court in dismissing a libel without prejudice to a new suit expressed a decision on the merits, which it afterwards, on motion, excluded, does not make the decree as finally entered a decision on the merits. *Ib.*

3. *Decrees; power of court over.*
While a matter is still in its breast, the court may change its opinion and do so by changing the decree. *Ib.*

See CORPORATIONS, 5;
PRACTICE AND PROCEDURE, 4;
RES JUDICATA.

JUDICIAL CODE.

See JURISDICTION, A 1–5;
STATUTES, A 10.

JUDICIAL DISCRETION.

See APPEAL AND ERROR, 5, 9;
WITNESSES, 3.

JUDICIAL NOTICE.

Of manifest omission in record.

Where it is a clearly apparent error, this court will take notice of evident omission in the transcript of record of the word "not." *Bradley* v. *Richmond*, 477.

JUDICIAL REVIEW.

See APPEAL AND ERROR;
CONSTITUTIONAL LAW, 19.

JURISDICTION.

A. OF THIS COURT.

1. *Under § 250 of Judicial Code; when authority of officer of United States drawn in question.*

The validity and scope of the authority of an officer of the United States is not drawn in question where the controversy is confined to determining whether the facts under which he can exercise that authority do or do not exist. *Foreman* v. *Meyer*, 452.

2. *Under § 250 of Judicial Code; when authority of officer of United States drawn in question.*

Where the Secretary of the Interior refused to issue a patent because a protest was pending, the denial of a petition for a writ of mandamus directed to him to issue the patent on the ground that there was no protest, does not draw in question the validity or scope of his authority but only the question of fact as to existence of a protest and there is no jurisdiction in this court under § 250 of the Judicial Code to review the judgment. *Champion Lumber Co.* v. *Fisher*, 445.

3. *Under § 250 of Judicial Code; meaning of "drawn in question."*

The meaning of the phrase "drawn in question" as it occurs in § 250 of the Judicial Code is the same as in § 709, Rev. Stat.; § 5 of the Circuit Court of Appeals Act, and other statutes regulating territorial appeals. *Champion Lumber Co.* v. *Fisher*, 445; *Foreman v. Meyer*, 452.

4. *Under § 250 of the Judicial Code; when authority of officer of the United States drawn in question.*

A statute of the United States authorizing an officer to act in a certain

manner under certain conditions is not drawn in question nor is the scope or validity of authority of the officer acting thereunder drawn in question, simply because there is a controversy as to whether the specified conditions do or do not exist. *Ib.*

5. *Under subd. 5 of § 250 of Judicial Code, to review judgments of Court of Appeals of District of Columbia.*

Under subd. 5 of § 250 of the Judicial Code of 1911 a final judgment of the Court of Appeals of the District of Columbia can only be reviewed by this court in cases where the validity of any authority exercised under the United States, or the existence or scope of any power or duty of any officer of the United States, is drawn in question. *Ib.*

6. *Under Criminal Appeals Act of 1907 to review interpretation of indictment.*

On appeals under the Criminal Appeals Act of 1907 this court has no jurisdiction to review the interpretation of the indictment by the lower court, *United States* v. *Patten*, 226 U. S. 525, and if that court has construed the count as alleging a combination of a particular date to be in violation of the Sherman Law, without regard to subsequent acts, this court cannot pass upon the validity of those acts. *United States* v. *Winslow*, 202.

7. *Bankruptcy; review of decision of Circuit Court of Appeals under § 25b of Bankruptcy Act.*

Where the question whether the claim against the bankrupt be allowed or not has been settled by an order of the court, questions remaining as to how the order shall be carried out are purely administrative, and as they do not involve the rejection or allowance of a claim this court has no power under § 25*b* of the Bankruptcy Act to review the decision of the Circuit Court of Appeals. *Wynkoop Co.* v. *Gaines*, 4.

8. *To review judgment in suit brought by trustee in bankruptcy; when judgment of Circuit Court of Appeals final.*

Where the jurisdiction of the Federal court of a suit brought by a trustee in bankruptcy rests upon diverse citizenship alone the judgment of the Circuit Court of Appeals is final; if, however, the petition also discloses as an additional ground of jurisdiction that the case arises under the laws of the United States, the judgment of the Circuit Court of Appeals is not final but can be reviewed by this court. *Lovell* v. *Newman*, 412.

9. *To review decision of state court; involution of Federal question.*

Whether an amendment to the state constitution requiring prosecu-

tions for crime to be based on indictment applies to pending cases is a question of local law and the decision of the state court is not reviewable here; and the decision of that court that such an amendment did not repeal the statute under which a prosecution based on an information already instituted does not deprive plaintiff in error of his liberty without due process of law under the Fourteenth Amendment of the Federal Constitution and no Federal question is involved giving this court jurisdiction to review the judgment of conviction. *Ross* v. *Oregon*, 150.

10. *To review decision of state court; discussion of merits where Federal question wanting.*

Where the record presents no Federal question, the writ of error must be dismissed and this court cannot discuss the merits of the questions presented and determined in the state court. *Ib.*

11. *Of appeal from Court of Appeals of District of Columbia under § 233 of District Code.*

Under § 233 of the Code of the District of Columbia this court has jurisdiction of an appeal from a judgment of the Court of Appeals of the District of Columbia where the validity of a regulation promulgated by the Commissioners under an act of Congress is drawn in question, irrespective of the conclusion reached by the court below. *Smoot* v. *Heyl*, 518.

12. *On appeal from Supreme Court of Porto Rico; scope of review.*

The jurisdiction of this court on appeals from the Supreme Court of Porto Rico is confined to determining whether the facts found by that court support the judgment, and whether there was material and prejudicial error in the admission or rejection of evidence manifested by exceptions duly certified. *Rosaly* v. *Graham*, 584.

13. *On appeal from Supreme Court of Porto Rico; scope of review.*

In the absence of findings on a special verdict there is nothing for this court to review except rulings on evidence, and in absence of error in those rulings the judgment must be affirmed. *Ib.*

14. *Effect of decision in prior case of constitutional questions on which writ of error based on jurisdiction to consider other assignments of error.*

If the constitutional questions on which the writ of error was based were not foreclosed when the writ was sued out, this court retains jurisdiction to consider other assignments of error even if the constitutional questions have meanwhile been decided in other cases

adversely to plaintiff in error. *Michigan Central R. R. Co.* v. *Vreeland*, 59.

See APPEAL AND ERROR.

B. OF CIRCUIT COURTS OF APPEALS.

Finality of judgment in suit by trustee in bankruptcy.

Where a trustee in bankruptcy sues in the Federal court on the ground that the property, or bond representing the value thereof, belonged to the bankrupt, and diverse citizenship exists, the suit does not depend upon the validity, construction or effect of any law of the United States, and the judgment of the Circuit Court of Appeals is final. *Lovell* v. *Newman*, 412.

See APPEAL AND ERROR, 2.

C. OF CIRCUIT COURTS.

1. *Determination of grounds of jurisdiction.*

Whether the Federal court had jurisdiction on grounds other than diverse citizenship must be determined from complainants' own statement as set forth in the bill affirmatively and distinctly, regardless of questions subsequently arising; grounds of jurisdiction may not be inferred argumentatively. *Lovell* v. *Newman*, 412.

2. *Bankruptcy; effect of § 23 of Bankruptcy Act as amended February 5, 1903.*

Section 23 of the Bankruptcy Act as amended by the act of February 5, 1903, conferring jurisdiction on the Circuit Courts of certain classes of cases was not intended to increase the jurisdiction of those courts in bankruptcy matters but rather to limit it to the classes of cases over which those courts are given jurisdiction by the acts creating them. *Ib.*

3. *Of suit by trustee in bankruptcy; grounds for.*

Where a trustee permits a bond to be given for value of goods and sues on the bond as merely representing the goods, and not as required by any statute, the case is not one arising under the laws of the United States, and jurisdiction is not conferred on the Federal court by reason of the existence of such a bond. *Ib.*

4. *Of suit by trustee in bankruptcy where diversity of citizenship exists; effect of consent of defendant.*

Where diversity of citizenship exists, the trustee can sue in the Federal court without consent of defendant and if consent be given, it does not, where such diversity exists, create an independent ground of jurisdiction. *Ib.*

D. OF THE INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE COMMISSION.

E. GENERALLY.

Place of holding court; effect of multiplication of places.

Where the jurisdiction is coextensive with the district, multiplication of places at which courts may be held or mere creation of divisions does not nullify it. (*Barrett* v. *United States*, 169 U. S. 231.) *Matheson* v. *United States*, 540.

See APPEAL AND ERROR, 1;
CORPORATIONS, 6–11;
GOVERNMENTAL POWERS, 1.

JURY AND JURORS.

Summoning; effect of summoning for service in new division in Alaska before act creating it in force.

Jurors summoned by the District Judge in Alaska before the act of March 3, 1909, creating a Fourth Division, became effective, to attend the first term of the court in that division when the act did become effective, *held* properly summoned, as the act did not create a new tribunal or revoke the power of the District Judges to summon jurors to attend at any session of the court. *Matheson* v. *United States*, 540.

KANSAS PACIFIC RAILWAY.

See PUBLIC LANDS, 21;
RAILROADS, 4.

LAND DEPARTMENT.

See INDIANS, 5;
PUBLIC LANDS.

LAND GRANTS.

See PUBLIC LANDS;
RAILROADS, 3;
TREATIES, 2.

LAW GOVERNING.

See DESCENT AND DISTRIBUTION; LOCAL LAW (UTAH); PARTNERSHIP, 2; PUBLIC LANDS, 9, 12, 13.

LEASE.

See CONTRACTS, 3.

LICENSE TAX.

See CONSTITUTIONAL LAW, 16, 17, 18;
INTERSTATE COMMERCE, 18, 38, 39;
TAXES AND TAXATION.

LIENS.

See NOTICE.

LIMITATION OF ACTIONS.

See INTERSTATE COMMERCE, 22, 27.

LIMITATION OF LIABILITY.

See INTERSTATE COMMERCE, 22, 23, 24.

LIQUORS.

See INTERSTATE COMMERCE, 18–21.

LOCAL LAW.

Arkansas. Act of April 1, 1909, regulating sale of certain articles (see Interstate Commerce, 39). *Crenshaw* v. *Arkansas*, 389; *Rogers* v. *Arkansas*, 401.

Demurrage Statute of 1907 (see Constitutional Law, 2). *St. Louis, I. M. & S. Ry. Co.* v. *Edwards*, 265.

District of Columbia. Code, § 233 (see Jurisdiction, A 11). *Smoot* v. *Heyl*, 518.

Building Regulations (see Party Wall, 2). *Ib.*

Indiana. Ordinance of South Bend permitting railway to use streets (see Constitutional Law, 6). *Grand Trunk Western Ry. Co.* v. *South Bend*, 544.

Mississippi. Railroad regulation (see Constitutional Law, 3). *Yazoo & M. V. R. R. Co.* v. *Greenwood Grocery Co.*, 1.

New Mexico Territory. Changes of county seats (see Territories). *Gray* v. *Taylor*, 51.

Elections (see Elections). *Ib.*

Oregon. Ordinance of Portland prohibiting use of locomotives in streets (see Constitutional Law, 7). *Southern Pacific Co.* v. *Portland*, 559.

Porto Rico. Actions for acknowledgment of natural children. Under the laws of Porto Rico, while Law Eleven of Toro as to effect of acts of recognition of rights of natural children may be in force, the provisions of §§ 133 and 137 of the Code of 1902 must be complied with in order to enforce such rights; and this applies to persons whose alleged parent died prior to the enactment of the Code. *Cordova* v. *Folgueras*, 375.

Contracts (see Bonds and Undertakings, 3). *Porto Rico* v. *Title Guaranty Co.*, 382.

Partnerships (see Partnership, 2, 3). *Zimmerman* v. *Harding*, 489.

Tennessee. Penalizing defenses in insurance litigation (see Constitutional Law, 9). *Fraternal Mystic Circle* v. *Snyder*, 497.

Utah. Common carriers; right of safe carriage on. In Utah the rights of safe carriage on a common carrier are not derived from the contract of carriage but are based on the law of the State requiring the carrier to use due care for the safety of passengers. *Southern Pacific Co.* v. *Schuyler*, 601.

Virginia. Bankers' license tax of Richmond (see Constitutional Law, 17). *Bradley* v. *Richmond*, 477.

Washington. Actions for wrongful death differentiated. Damages to the estate of one killed by negligence is a distinct cause of action, under the laws of the State of Washington, from damages to the parents of the person so killed. *Winfree* v. *Northern Pacific Ry. Co.*, 296.

Generally.—See JURISDICTION, A 9;
PATENTS, 3;
PRACTICE AND PROCEDURE, 10, 11, 12;
RAILROADS, 5, 6;
REMOVAL OF CAUSES, 5;
STATUTES, A 5, 6, 7.

MAILS.

See CRIMINAL LAW, 4, 5, 6.

MALICIOUS PROSECUTION.

What constitutes; assertion of patent rights as.

Assertion of patent rights may be so conducted as to constitute malicious prosecution; but failure of plaintiff to maintain the action

does not necessarily convict of malice. *Virtue* v. *Creamery Package Co.*, 8.

See RESTRAINT OF TRADE, 1.

MANDAMUS.

See JURISDICTION, A 2.

MARRIAGE.

See PUBLIC LANDS, 9, 11, 13.

MASTER AND SERVANT.

See CONSTITUTIONAL LAW, 1;
EMPLOYERS' LIABILITY ACT.

MEASURE OF DAMAGES.

See DAMAGES;
EMPLOYERS' LIABILITY ACT, 7–10.

MISJOINDER OF PARTIES.

See CORPORATIONS, 4.

MONOPOLY.

See RESTRAINT OF TRADE.

MUNICIPAL CORPORATIONS.

Police power to regulate method by which grant from State shall be used. Although a municipality cannot defeat a grant made under authority of the State, it may under the police power reasonably regulate the method in which it shall be used; such regulations do not defeat the grant, if it is still practicable to operate under the new regulations. (*Railroad Co.* v. *Richmond*, 96 U. S. 521.) *Southern Pacific Co.* v. *Portland*, 559.

See CONSTITUTIONAL LAW, 5, 12–15;
FRANCHISES.

MUNICIPAL ORDINANCES.

See FRANCHISES.

NAMES.

See VARIANCE, 2, 3.

NATURAL CHILDREN.

See LOCAL LAW (P. R.).

NAVIGABLE WATERS.

1. *Underlying lands; title to.*

Lands underlying navigable waters within the several States belong to the respective States in virtue of their sovereignty subject to the paramount power of Congress to control navigation between the States and with foreign powers. *Scott* v. *Lattig*, 229.

2. *Underlying lands; sovereignty of State over.*

Each new State, upon its admission to the Union, becomes endowed with the same rights and powers in regard to sovereignty over lands under navigable waters as the older States. *Ib.*

See PUBLIC LANDS, 15, 23, 24.

NEGLIGENCE.

See INTERSTATE COMMERCE, 5, 22;
LOCAL LAW (Wash.);
PRACTICE AND PROCEDURE, 11.

NEW MEXICO.

See ELECTIONS;
TERRITORIES.

NEW PROMISE.

See BANKRUPTCY, 3, 11.

NON COMPOS MENTIS.

See CRIMINAL LAW, 7, 8.

NOTICE.

Notice of lien to purchaser of real estate; what constitutes.

Service of the complaint in an action brought to establish an equitable lien on property superior to the rights of all parties defendant is notice to a defendant having knowledge of the suit. *Luke* v. *Smith*, 379.

OBJECTIONS.

See PRACTICE AND PROCEDURE, 13, 14;
VARIANCE, 4.

OBSCENE MATTER.

See CONSTITUTIONAL LAW, 4, 5, 6.

OCCUPATION TAX.
See CONSTITUTIONAL LAW, 16, 17, 18;
TAXES AND TAXATION.

ONUS PROBANDI.
See BURDEN OF PROOF;
CRIMINAL LAW, 7.

OPINION EVIDENCE.
See WITNESSES, 3.

OPTIONS.
See CONTRACTS, 4.

ORDINANCES.
See FRANCHISES.

ORIGINAL PACKAGE.
See INTERSTATE COMMERCE, 44.

PACIFIC RAILROAD ACTS.
See PUBLIC LANDS, 16;
RAILROADS, 3.

PARENT AND CHILD.
See DAMAGES;
EMPLOYERS' LIABILITY ACT, 10;
LOCAL LAW (P. R.).

PARTIES.
See APPEAL AND ERROR, 4; PRACTICE AND PROCEDURE, 17, 18;
CORPORATIONS, 4; REMOVAL OF CAUSES, 1, 2;
EMPLOYERS' LIABILITY ACT, 12; RES JUDICATA, 2.

PARTNERSHIP.
1. *Term of.*
A partnership formed to run a hotel for which a lease is obtained *held* in the absence of any stipulation as to duration to be for the term of the lease. *Zimmerman* v. *Harding*, 489.

2. *Law governing.*
Where partnerships are regulated by statute, as in Porto Rico, the rights of one attempting to dissolve depend upon the statute rather than on general law applicable elsewhere. *Ib.*

3. *Dissolution; application of §§ 1607, 1609, Civil Code of Porto Rico.*
The right to dissolve under § 1607, Civil Code Porto Rico, is confined to partnerships the duration of which has not been fixed; under § 1609 a partnership for fixed duration can only be dissolved for sufficient cause shown to the court, and one attempting to dissolve before the fixed termination and to excluding the other from participation must account to the latter for his share of the profits until the court decrees a dissolution in a suit brought to dissolve. *Ib.*

4. *Property; continuance of status.*
Partnership property continues to be such after as well as before dissolution. *Ib.*

5. *Accounting after illegal dissolution.*
Where one party attempts to illegally dissolve a partnership without suit and subsequently the other brings a suit for dissolution in accordance with the statute the former must account for all profits until the final decree of dissolution. *Ib.*

6. *Remedies for breach.*
There may be a recovery at law for damages resulting from a breach of the partnership agreement as well as an action for accounting in equity for the same breach and a partner wrongfully excluded from management and profits need not wait for the end of the period but may show in an action at law his probable profits. *Ib.*

7. *Election of remedies; when doctrine not applicable in case of partnership.*
The doctrine of election is applicable as between inconsistent remedies, but does not apply to a partner wrongfully excluded from participation. He does not lose his right to an accounting because he first starts an action at law which he subsequently dismisses. *Ib.*

8. *Salary; when managing partner not entitled.*
One who wrongfully excludes the other partner from management of the partnership affairs is not entitled to a salary for managing them during such period of exclusion. *Ib.*

See PRACTICE AND PROCEDURE, 5.

PARTY WALL.

1. *Definition.*

The fundamental idea of a party wall is that of mutual benefit. *Smoot* v. *Heyl*, 518.

2. *Bay-window wall as.*

In this case this court affirms the judgment of the Court of Appeals that the wall of a bay-window which can serve no mutual purpose is not a party wall within the meaning of the building regulations in force in the District of Columbia. *Ib.*

See PRACTICE AND PROCEDURE, 8.

PASSES.

See RAILROADS, 1, 2, 5.

PATENTS.

1. *Life of patent for invention previously patented in another country.*

Although under § 4884, Rev. Stat., a patent is for seventeen years, under the provision of § 4887, Rev. Stat., as it has been judicially construed, the American patent granted for an invention previously patented in another country is limited by law, whether so expressed in the patent itself or not, to expire with the foreign patent previously granted having the shortest term. *Cameron Septic Tank Co.* v. *Knoxville*, 39.

2. *Life of, under § 4887, Rev. Stat.; effect of Art. 4 bis of Treaty of Brussels of 1900.*

Section 4887, Rev. Stat., limiting patents to the period of the same patent previously granted by a foreign country, if any, has not been superseded by Article 4 *bis* of the Treaty of Brussels of 1900. *Ib.*

3. *Life of; law governing; effect of treaty on.*

A most essential attribute of a patent is the term of its duration, which is necessarily fixed by local law, and the Treaty of Brussels will not be construed as breaking down provisions of the local law regulating the issuing of the patent. *Ib.*

4. *Life of, under § 4887, Rev. Stat.; effect of act of 1903 and Brussels Treaty.*

The act of 1903 did not make Article 4 *bis* of the Treaty of Brussels effective or override the provisions of § 4887, Rev. Stat. *Ib.*

5. *Life of, under § 4887, Rev. Stat.: effect of act of 1903, effectuating provisions of Brussels Treaty.*

The act of 1903 effectuating the provisions of the Brussels Treaty, as construed in the light of surrounding circumstances and of similar legislation in other countries, did not extend an American patent beyond the period prescribed by § 4887, Rev. Stat. *Ib.*

6. *Effect as cover for violation of law.*

Patents and patent rights cannot be made a cover for violation of law; but they are not so used when only the rights conferred by law are exercised. *Virtue* v. *Creamery Package Co.*, 8.

7. *Patentee's right to protection.*

Patent rights can be protected by a party to an illegal combination. *Ib.*

8. *Rights of patentee.*

The owner of a patent has exclusive rights of making, using and selling, which he may keep or transfer in whole or in part. *Ib.*

9. *Rights conferred by; exclusion of competitors.*

Exclusion of competitors from making the patented article is of the very essence of the right conferred by the patent. *United States* v. *Winslow*, 202.

See MALICIOUS PROSECUTION,
RESTRAINT OF TRADE, 5, 6, 9.

PATENTS FOR LAND.

See PUBLIC LANDS, 17.

PEDDLERS.

Definition of.

Peddlers, at common law, and under those statutes regulating them which have been sustained, are such as travel from place to place selling goods carried with them, and not such as take orders for delivery of goods to be shipped in the course of commerce. *Crenshaw* v. *Arkansas*, 389.

See INTERSTATE COMMERCE, 38, 39.

PENALTIES AND FORFEITURES.

See BONDS AND UNDERTAKINGS; CONSTITUTIONAL LAW, 8, 9, 13; INTERSTATE COMMERCE, 33, 36; RAILROADS, 6.

PERSONS.

See INTERSTATE COMMERCE, 1.

PLEADING.

Failure to answer; effect of.

One failing to answer raises no issue entitling him to a hearing, and he cannot afterwards be heard to complain that he was denied a hearing. *Ross* v. *Stewart*, 530.

See ACTIONS, 2; PRACTICE AND PROCEDURE, 14; PUBLIC LANDS, 7, 8; REMOVAL OF CAUSES, 3.

POLICE POWER.

See CONGRESS, POWERS OF, 3; CONSTITUTIONAL LAW, 1, 13; FRANCHISES, 5, 6; INTERSTATE COMMERCE, 37, 38, 39; MUNICIPAL CORPORATIONS.

PORTO RICO.

1. *Status of.*

While Porto Rico has not for all purposes been fully incorporated into the United States it is not foreign territory nor are its citizens aliens. *Williams* v. *Gonzales*, 192 U. S. 1. Its organization is in most essentials that of a Territory. (*Kopel* v. *Bingham*, 211 U. S. 468.) *American R. R. Co.* v. *Didricksen*, 145.

2. *Status of; sovereignty; exemptions.*

The government of Porto Rico, as established by the Organic Act, with some possible exceptions, comes within the general rule exempting a government sovereign in its attributes. *Porto Rico* v. *Rosaly*, 270.

3. *Status of in respect of amenability to suit.*

That government of Porto Rico, as established by the Organic Act of April 12, 1900, is a strong likeness of that established for Hawaii which has immunity from suit. (*Kawananakoa* v. *Polyblank*, 205 U. S. 349.) *Ib.*

4. *Sovereignty; construction of organic act.*

The provision in § 7 of the Organic Act of Porto Rico that the people of Porto Rico shall have power to sue and be sued is not to be construed as destroying the grant of sovereignty given by the act itself. *Ib.*

5. *Suits against.*

The government of Porto Rico cannot be sued without its consent. *Ib.*

3. *Suits against; construction of § 7 of Organic Act.*
The words "to sue and be sued" as used in § 7 of the Organic Act of Porto Rico, when construed in connection with the grant of governmental powers therein contained, amount only to a recognition of a liability to be sued in case of consent duly given. *Ib.*

See COURTS, 2; EMPLOYERS' LIABILITY ACT, 1, 2; JURISDICTION, A 12, 13; LOCAL LAW.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF; CONSTITUTIONAL LAW, 1, 4, 10; INTERSTATE COMMERCE, 9, 10, 33, 34, 52, 53; NAVIGABLE WATERS, 1; PUBLIC LANDS, 26; WHITE SLAVE TRAFFIC ACT, 1, 2, 3.

PRACTICE AND PROCEDURE

1. *Determination of constitutional questions dependent upon complete record.*
Whether subsequent regulations impair the obligation of a contract should only be determined on a complete record; and where, as in this case, all the conditions were not considered by the court of original jurisdiction the bill will be dismissed without prejudice. *Southern Pacific Co.* v. *Portland*, 559.

2. *Determination of what is contract alleged to be impaired.*
What the contract alleged to be impaired by subsequent legislation is, is a question which this court is bound to determine for itself independent of decisions of the state court. (*Northern Pacific Ry.* v. *Duluth*, 208 U. S. 590.) *Grand Trunk Western Ry. Co.* v. *South Bend*, 544.

3. *Disposition of case by Circuit Court of Appeals.*
Where error is assigned in the Circuit Court of Appeals, not only on refusal of the trial court to set aside the verdict against, but also for failure to enter a verdict in favor of, defendant, the Circuit Court of Appeals, if it finds facts justifying such action, may reverse and order the complaint dismissed. *Van Iderstine* v. *National Discount Co.*, 575.

4. *Error assigned here as to allowance of items in account not considered.*
Where the case has been tried in an irregular manner and items are allowed in the final decree which do not appear in the auditor's or master's report, this court cannot attempt to correct errors assigned here and will presume that the decree so far as it stands

upon questions of fact is supported by evidence not objected to. *Zimmerman* v. *Harding*, 489.

5. *Exceptions; when necessary to review.*
This court can only review an improper allowance of salary to a partner where an exception has been filed to such allowance. *Ib.*

6. *Findings of fact; when statement in opinion of lower court sufficient.*
When the judgment record itself discloses that the opinion of one of the judges deciding the case was made part of the judgment, this court may accept the statement of fact therein contained in lieu of more formal findings. *Rosaly* v. *Graham*, 584.

7. *Findings of fact; equivalent of negative finding upon fact essential to maintain suit.*
A finding by the appellate court that the fundamental fact of plaintiff's interest in the property sued for has not been proven is equivalent to a negative finding upon a fact essential to maintain the suit and supports a judgment of dismissal by the trial court. *Ib.*

8. *Following findings of fact by lower court.*
In the absence of plain error this court will accept the decision of the Court of Appeals of the District of Columbia determining whether a particular structure comes within the definition of a party wall under the building regulations promulgated by the Commissioners. *Smoot* v. *Heyl*, 518.

9. *Following findings of lower courts.*
In this case it does not appear that the contracts between the defendants were made for the purpose of injuring the plaintiff, and both courts below having so held this court also so holds. *Virtue* v. *Creamery Package Co.*, 8.

10. *Following state court's construction of state statute.*
The Supreme Court of the Territory of Arizona having, in construing the recording statute, followed the decisions of the courts of Texas from whose laws the statute was copied, and held that one buying with notice that the holder of the legal title held it in trust for others took with notice notwithstanding the act, this court sees no reason for not following the general rule that it will follow the construction given by the local court to a local statute. *Luke* v. *Smith*, 379.

11. *Following state court's decision as to joint liability for negligence.*
Whether there was a joint liability of defendants sued jointly for negligence is a matter of state law and this court will not go behind

the decision of the highest court of the State to which the question can go. (*Southern Railway Co.* v. *Miller*, 217 U. S. 209.) *Chicago, R. I. & P. Ry. Co.* v. *Schwyhart*, 184.

12. *Following territorial courts in determining non-federal questions.*
In determining questions from the Territories not based on Federal law this court inclines towards following the local courts, *Treat* v. *Grand Canyon Ry. Co.*, 222 U. S. 448, and so *held* as to questions relating to the passage of an act of the legislature of the Territory. *Gray* v. *Taylor*, 51.

13. *Objections raised for first time in this court not considered.*
Where an action under § 7 of the Sherman Act was tried in the Circuit Court and argued in the Circuit Court of Appeals on the basis of coöperation between the defendants, this court will not consider a contention raised for the first time that one of the defendants was itself a combination offensive to the statute. *Virtue* v. *Creamery Package Co.*, 8.

14. *Objection that case not at issue when tried; when raised too late.*
After a plea of *res judicata* has been filed and considered and the case tried, it is too late for defendant to raise the objection in this court for the first time that the case was not at issue and should not have been tried until after plaintiff had filed a replication to the plea. *Troxell* v. *Delaware, L. & W. R. R. Co.*, 434.

15. *Review of facts on writ of error to state court, when.*
On writ of error to a state court, while this court does not ordinarily review findings of fact, if a Federal right has been denied as the result of a finding of fact which is without support in the evidence, this court may examine the evidence to the extent necessary to give plaintiff in error the benefit of the Federal right asserted. *Southern Pacific Co.* v. *Schuyler*, 601.

16. *Statement filed in case as to invalidity of clause in contract; conclusiveness of.*
A statement filed in the case that a clause in a contract is void under a statute is a concession for purposes of argument as to a matter of law and cannot conclude anyone, as it does not operate to withdraw the contract from the case nor its validity from the court's consideration. *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 469.

17. *Who may attack constitutionality of statute.*
This court will not entertain a case where the party setting up the unconstitutionality of a statute does not belong to the class for

whose sake the constitutional protection is given or to the class primarily affected; nor will it, at the instance of a party not belonging to a class affected, go into an imaginary case on the ground that the law if unconstitutional as to one is so as to all. (*Hatch* v. *Reardon*, 204 U. S. 152.) *Hampton* v. *St. Louis, I. M. & S. Ry. Co.*, 456.

18. *Who may attack constitutionality of statute.*

Where there was an agreement of the parties to confine the case wholly to the question of constitutionality of the statute attacked, and complainant does not show that his rights protected under the Constitution have actually been invaded, but the objections suggested are conjectural, the bill should be dismissed; and so *held* as to an action brought to test the constitutionality under the commerce clause of a statute of Arkansas requiring railroads to promptly furnish cars. *Ib.*

See COURTS, 1, 2; JURISDICTION, A 10, 13; FEDERAL QUESTION, 7; REMOVAL OF CAUSES, 5.

PRECEDENTS.

See COURTS, 6.

PREFERENCES.

See BANKRUPTCY, 8, 9, 10.

PRESUMPTIONS.

That tribunal will not perform duty unjustly.

The presumptions are that the tribunal charged with the duty of determining whether a classification is proper will not perform its duty unjustly. *Bradley* v. *Richmond*, 477.

See INTERSTATE COMMERCE, 29, 31; PUBLIC LANDS, 6, 18; PRACTICE AND PROCEDURE, 4; RAILROADS, 2; STATUTES, A 5.

PRINCIPAL AND AGENT.

See RESTRAINT OF TRADE, 9.

PRIORITIES.

See PUBLIC LANDS, 5, 14, 18, 21.

PRIVILEGED COMMUNICATIONS.

1. *Books and papers of client as.*

Professional privilege does not relieve an attorney from producing

under subpœna of the Federal grand jury books and papers of a corporation left with him for safe-keeping by a client who claimed to be owner thereof. *Grant* v. *United States*, 74.

2. *Books and papers of client as.*
Independent books and documents of a defunct corporation left with an attorney for safe-keeping by a client claiming to own them are not privileged communications. *Ib.*

3. *Books and papers of client as.*
Books and documents of a corporation must be produced by an attorney with whom they were left for safe-keeping even if they might incriminate the latter. *Ib.*

PRIVILEGES AND IMMUNITIES.
See CONSTITUTIONAL LAW, 4.

PRIVILEGE TAX.
See TAXES AND TAXATION.

PROCESS.
See CORPORATIONS, 6–11;
NOTICE.

PRODUCTION OF BOOKS AND PAPERS.
See CONSTITUTIONAL LAW, 28;
PRIVILEGED COMMUNICATIONS.

PROMOTERS.
See CORPORATIONS, 1.

PROPERTY RIGHTS.
See CONTRACTS, 5, 6, 7.

PROSTITUTES.
See INTERSTATE COMMERCE, 52, 53;
WHITE SLAVE TRAFFIC ACT.

PUBLIC HEALTH.
See COURTS, 3.

PUBLIC LANDS.

1. *Application based on soldier's claim; substitution of claim after rejection.*

Where an application for public lands is finally rejected on the ground that the soldier on whose claim the application is based had no right thereto, the case is closed and cannot be kept open for perfection by substituting the claim of another soldier, and the instant the application is rejected the land becomes subject to appropriation by another. *Robinson* v. *Lundrigan*, 173.

2. *Applications; basis for; substitution of rights.*

An application must depend upon its particular basis; it cannot be kept open for the substitution of another right than that upon which it was made; and if a practice to do so existed in the Department it was wrong. (*Moss* v. *Dowman*, 176 U. S. 413.) *Ib.*

3. *Applications; rejection; substitution of claims; effect of action by Secretary in keeping case open.*

Even though the Secretary keeps the case open and afterwards rules in favor of the subsequent entryman, the original applicant is not divested of any rights, for no right had attached. *Ib.*

4. *Application of act of March 2, 1896.*

The act of March 2, 1896, 29 Stat. 42, was one of a series of acts and applies only to public lands open to entry and not to lands within an Indian reservation. *Northern Pacific Ry. Co.* v. *United States*, 355.

5. *Conflicting claims; time of initiation controlling.*

As between conflicting claims to public lands, the one whose initiation is first in time, if adequately followed up, is to be deemed first in right. *Svor* v. *Morris*, 524.

6. *Contests; presumption as to timeliness.*

The presumption is that a contest has been commenced in time, otherwise it would not have been entertained. *Ross* v. *Stewart*, 530.

7. *Contests; failure to file answer after notice; effect of.*

Where the party to a contest and his attorney have been notified that no answer had been filed on his behalf, and they take no steps to correct this omission, and the case is decided adversely to him, the failure to file the answer furnishes no ground for avoiding the decision. *Ib.*

8. *Contests; reopening decision; misrepresentation and fraud to justify.*
Misrepresentation and fraud that will entitle a contestant to open a decision in a land contest must be such as prevented him from presenting his side of the controversy or the officer deciding it from considering it. It is not enough to charge falsity in pleadings or perjury of witnesses. (*Estes* v. *Timmins*, 199 U. S. 391.) *Ib.*

9. *Entries not perfected before death; right acquired by wife under §§ 2291, 2292, Rev. Stat.*
Under §§ 2291, 2292, Rev. Stat., no rights accrue to the wife of an entryman who dies before the entry is perfected, and nothing passes under the inheritance laws of the State in which the land is situated. *Wadkins* v. *Producers Oil Co.*, 368.

10. *Homestead entries; relation; when vested right obtained.*
Under § 3 of the act of May 14, 1880, providing that settlers might file homestead entries and that their rights should relate back to date of settlement; the inchoate right is initiated by the settlement and the perfected right when evidenced by patent finally obtained relates back to that date, but no vested right is obtained until full compliance with the provisions of the act. *Ib.*

11. *Homestead entries; rights acquired by wife of entryman.*
Where a statute of the United States gives definite rights on the happening of certain contingencies, no rights can vest until such contingencies happen, and unless the wife survives the entryman and becomes his widow she acquires no rights to the land, whether the entry was made before or after her marriage to the entryman. *Ib.*

12. *Homestead entries; effect of state laws designating beneficiaries in event of death of entryman prior to patent.*
Prior to patent the rights of the entryman are essentially inchoate and exclusively within the operation of the laws of the United States, and where those laws designate the beneficiaries of a compliance therewith, state laws are excluded. (*McCune* v. *Essig*, 199 U. S. 382.) *Ib.*

13. *Homestead entries; right of children of wife of entryman in event of her death prior to perfection and patent.*
An entryman, prior to marriage, settled on the land but made his entry after marriage; prior to perfection and patent his wife died leaving children; after perfecting and obtaining a patent he sold. *Held* that he perfected the entry in his own right and under §§ 2291,

2293, his wife had acquired no interest therein which descended to her children under the law of the State. *Ib.*

14. *Homestead settlement; superiority over new selection of lieu lands where first selection rejected.*

Where the first selection of lieu lands is rejected as irregular, the land is open during the interval before a new and regular selection is filed, and the homestead right of one who had previously settled thereon in good faith attaches and is superior to that under the new selection. *Svor* v. *Morris*, 524.

15. *Islands within public domain in navigable streams; title to; effect of omission from survey.*

An island within the public domain in a navigable stream and actually in existence at the time of the survey of the banks of the stream, and also in existence when the State within which it was situated is admitted to the Union, remains property of the United States, and even though omitted from the survey it does not become part of the fractional subdivisions on the opposite bank of the stream; and so *held* as to an island in Snake River, Idaho. *United States* v. *Mission Rock Co.*, 189 U. S. 391, followed; *Whitaker* v. *McBride*, 197 U. S. 510, distinguished. *Scott* v. *Lattig*, 229.

16. *Pacific Railroad Acts; effect on persons subsequently acquiring land.*

All persons acquiring public lands after the passage of the Pacific Railroad Acts took the same subject to the right of way conferred by them on the proposed roads. (*Railroad Co.* v. *Baldwin*, 103 U. S. 426.) *Stuart* v. *Union Pacific R. R. Co.*, 342.

17. *Patents; exception to rule in favor of.*

The rule that resolves doubts in favor of patents issued by the United States does not apply to those issued for land within the boundaries of an Indian reservation fixed by treaty. *Northern Pacific Ry. Co.* v. *United States*, 355.

18. *Priority of claims; actions of administrative officers; presumptions to support.*

All reasonable presumptions must be indulged in support of the action of administrative officers to whom the law entrusts proceedings determining priority of claims; and in the absence of material error of law, or of misrepresentation or fraud practiced on or by them, their action should stand approved by the court. *Ross* v. *Stewart*, 530.

19. *Purchasers from railroads; status of.*
Purchasers from railroads, even though in good faith, are not *bona fide* purchasers under the public land laws. *Northern Pacific Ry. Co.* v. *United States*, 355.

20. *Segregation; effect of application based on invalid claim.*
An application based on an invalid claim of a soldier is not an entry valid on its face which segregates the land from the public domain and precludes its appropriation by another until set aside. *McMichael* v. *Murphy*, 197 U. S. 304, distinguished. *Robinson* v. *Lundrigan*, 173.

21. *Right of way to which Kansas Pacific Railway entitled and its superiority over rights initiated subsequent to act of 1864.*
Under the acts of 1862 and 1864 the Kansas Pacific Railway Company had authority to build west of the one hundredth meridian to Denver and was entitled to a right of way two hundred feet from the center of the track, and that right is superior to claims initiated after the act of 1864, even if prior to the construction of the road; and this right is not defeated by adverse possession. *Stuart* v. *Union Pacific R. R. Co.*, 342.

22. *Settlement; sufficiency.*
One who settled on land not at the time open to entry but which became open does not have to go through the idle ceremony of vacating and settling upon it anew. *Svor* v. *Morris*, 524.

23. *Surveys; effect of error in, on title of United States.*
An error in omitting an island in a navigable stream does not divest the United States of the title or interpose any obstacle to surveying it at a later time. *Scott* v. *Lattig*, 229.

24. *Surveys; effect of omission of island from, to vest title in abutting riparian proprietors.*
Purchasers of fractional interests of subdivisions on the bank of a navigable stream do not acquire title to an island on the other side of the channel merely because the island was omitted from the survey. *Ib.*

25. *Title acquired by railroad; when held in trust for settler.*
Title acquired by a railway company or its assignee of lieu lands, improperly selected because not open by reason of settlement thereon, is held in trust for the settler by such assignee or his grantee who took with notice. *Svor* v. *Morris*, 524.

26. *Townsites in Indian lands; contests; settlement by townsite commission.*

Congress has power to invest a townsite commission with power to determine contests between rival claimants to lots in a townsite in Indian lands acquired and thrown open to settlement. *Ross* v. *Stewart*, 530.

27. *Townsites in Indian lands; appraisal and disposal of lots; to whom designated.*

The acts providing for designation, surveying and platting townsites in the Cherokee lands and disposing thereof plainly show the intent of Congress to commit the appraisal and disposal of the lots to the commission created by the acts, subject to supervision by the Secretary of the Interior. *Ib.*

28. *Townsites in Indian lands; determination of conflicting possessory claims.*

The provisions of the acts do not contemplate the determination of conflicting possessory claims without inquiry into the merits. *Ib.*

29. *Withdrawn lands; right of railroad; effect of failure of settler to assert claim within time allowed by act of May 14, 1880.*

Under the act of May 14, 1880, 2 Stat. 141 and § 2265, Rev. Stat., the rights of a settler who fails to assert his claim within three months of settlement are not inexorably extinguished but only awarded to the next settler in order of time who does assert his claim and complies with the law, and advantage of this statute cannot be taken by a railroad company selecting land which is withdrawn from selection by having already been settled on. *Hastings & Dakota Ry. Co.* v. *Arnold*, 26 L. D. 538, approved. *Svor* v. *Morris*, 524.

See FEDERAL QUESTION.

PUBLIC POLICY.

See CONVEYANCES.

PUNCTUATION.

See STATUTES, A 9.

RAILROADS.

1. *Gratuitous passenger; railway mail clerk as.*

In this case the finding of the state court that a railway mail clerk while traveling on his own business was a gratuitous passenger was well founded on the evidence. *Southern Pacific Co.* v. *Schuyler*, 601.

2. *Free interstate transportation by not presumed.*
There is no presumption that a railway company gives free interstate transportation, and that is a fact that must be established by evidence. *Ib.*

3. *Pacific Railroad Acts; how to be construed.*
It has also been heretofore decided that the Pacific Railroad Acts of July 1, 1862, and July 2, 1864, should be considered and construed as one act. *Stuart* v. *Union Pacific R. R. Co.*, 342.

4. *Kansas Pacific Railroad; extent of right to build.*
It has already been decided by this court that the Kansas Pacific Railway Company had a right to build west of the one hundredth meridian. *Ib.*

5. *Liability of; effect of violation by passenger of anti-pass provision of Hepburn Act.*
The anti-pass provision of the Hepburn Act does not make an outlaw of one traveling interstate on a pass and so deprive him of the benefit of the local law that makes the carrier responsible for exercising due care. *Southern Pacific Co.* v. *Schuyler*, 601.

6. *Passengers; rights under local law; effect of violation of Hepburn Act.*
Penalties are not to be enlarged by construction; and so *held* that one violating the Hepburn Act by accepting gratuitous passage is not deprived of protection due to other passengers under the local law as well as subject to the penalty specified in the act. *Ib.*

7. *Right of way; to what entitled.*
A right of way is a substantial and obvious benefit and if a railroad is entitled to a right of way under an act, it is entitled thereto under a later act extending the route and granting all benefits given under the earlier act. *Stuart* v. *Union Pacific R. R. Co.*, 342.

8. *Right of way; how acquired under acts of 1862, 1864.*
Even though the record may not show that all the maps of definite location had been filed, a railroad company may acquire under the acts of 1862 and 1864 a right of way by actual construction of the road. *Ib.*

9. *Right of way; effect on title of non-occupation.*
A railroad obtaining a right of way under the acts of 1862 and 1864 retains title thereto whether occupied by it or not. *Ib.*

10. *Trespasser; status of one accepting free transportation.*
One holding a government commission that entitles him to free inter-

state railway transportation while on duty and who while not on duty enters a train, relying on such commission and with the consent of the officials in charge of the train, and remains thereon with their consent, is not a trespasser even if in so doing he violates the anti-pass provision of the Hepburn Law. *Southern Pacific Co.* v. *Schuyler*, 601.

See CONSTITUTIONAL LAW, 1, 2, 3, 6;
FRANCHISES, 2, 4, 8;
INTERSTATE COMMERCE, 11, 35, 36, 39;
PUBLIC LANDS, 16, 19, 21, 25, 29.

RAILWAY MAIL CLERKS.

See RAILROADS, 1.

RATES.

See INTERSTATE COMMERCE, 5, 6, 17, 23, 24, 26, 28 29, 30, 31, 32, 45–50;
INTERSTATE COMMERCE COMMISSION, 2–6.

RECORD.

See APPEAL AND ERROR, 8;
JUDICIAL NOTICE;
PRACTICE AND PROCEDURE, 1

RELATION.

See BANKRUPTCY, 5, 6;
PUBLIC LANDS, 10.

REMEDIES.

See CONTRACTS, 7;
HABEAS CORPUS;
PARTNERSHIP, 6, 7

REMOVAL OF CAUSES.

1. *Joinder of parties; motive of plaintiff immaterial.*

The motive of the plaintiff in joining defendants taken by itself, does not affect the right to remove. If there is a joint liability he has a right to enforce it, whatever his reason may be. (*Chicago, Burlington & Quincy Ry. Co.* v. *Willard*, 220 U. S. 413.) *Chicago, R. I. & P. Ry. Co.* v. *Schwyhart*, 184.

2. *Joinder of parties; effect of financial disparity.*

The fact that the resident defendant joined in a suit with a rich non-

resident corporation is poor does not affect the case, if the cause of action against them actually be joint. *Ib.*

3. *Amendment of declaration after removal denied; materiality of.*
The fact that the declaration was amended after the petition to remove had been denied *held* immaterial where, as in this case, it merely made the original cause of action more precise. *Ib.*

4. *Consideration by this court on question of removal.*
On the question of removal this court need not consider more than whether there was a real intention to get a joint judgment, and whether the record showed colorable ground for it when the removal was denied. *Ib.*

5. *Verdict and affirmance against resident defendant; effect to establish statement of cause of action.*
Whether or not a cause of action was stated against the resident defendant is a question of state law, and where the verdict went against that defendant and was affirmed by the highest court of the State to which it could go, this court takes the fact as established. *Ib.*

REPEALS.

See FRANCHISES, 3.

RESERVATIONS.

See INDIANS, 3, 5, 6;
PUBLIC LANDS, 4, 17.

RES JUDICATA.

1. *Scope of estoppel by former judgment.*
Where the second suit is upon the same cause of action set up in the first suit, an estoppel by judgment arises in respect to every matter offered or received in evidence or which might have been offered to sustain or defeat the claim in controversy; but where the second suit is upon a different claim or demand, the prior judgment operates as an estoppel only as to matters in issue or points controverted and actually determined in the original suit. *Troxell* v. *Delaware, L. & W. R. R. Co.*, 434.

2. *Essentials to create estoppel by judgment.*
To work an estoppel, the first proceeding and judgment must be a bar to the second one because it is a matter already adjudicated

between the parties, and there must be identity of parties in the two actions. *Ib.*

3. *Judgment of dismissal in action for death by wrongful act under state law not bar to subsequent action under Employers' Liability Act.*

A suit for damages for causing death brought by the widow and surviving children of the deceased under the state law is not on the same cause of action as one subsequently brought by the widow as administratrix against the same defendant under the Employers' Liability Act, and the judgment dismissing the complaint in the first action is not a bar as *res judicata* to the second suit. *Ib.*

See CONTRACTS, 1.

RESTRAINT OF TRADE.

1. *Actions under § 7 of Anti-trust Act; malicious prosecution as basis of.*

An action under § 7 of the Sherman Act based on a combination between the defendants cannot be sustained by proof of malicious prosecution on the part of only one of the defendants. *Virtue* v. *Creamery Package Co.*, 8.

2. *Actions under § 7 of Anti-trust Act; coöperation involving monopoly as necessary element.*

To sustain an action under § 7 of the Sherman Act a necessary element is coöperation by some of the defendants in a scheme involving monopoly or restraint of interstate trade and causing the damage complained of. *Ib.*

3. *Combinations within Anti-trust Act.*

A combination for greater efficiency does not necessarily violate the Sherman Anti-trust Act. *United States* v. *Winslow*, 202.

4. *Combinations; acts to be regarded how.*

While the combined effect of the separate acts alleged to have made the combination illegal must be regarded as a whole, the strength of each act must be considered separately. *Virtue* v. *Creamery Package Co.*, 8.

5. *Combinations in; effect of simultaneous bringing of suits for infringement of patent as.*

Mere coincidence in time in the bringing by separate parties of suits for infringements on patents against the same defendant *held*, in this case not to indicate a combination on the part of those parties to injure the defendant within the meaning of § 7 of the Sherman Anti-trust Act. *Ib.*

6. *Combinations in; validity of combination of several groups of non-competing manufacturers.*

Where each of several groups are carrying on a legal business of making patented machines which do not compete with each other, although the machines of all the groups are used by manufacturers of the same article, such as shoes, a combination of the several groups does not violate the Sherman Anti-trust Act. *United States* v. *Winslow*, 202.

7. *Combinations in; when Government may not claim monopoly.*

Where the share in interstate commerce does not appear in the record, and the machines in question are not alleged to be types of all the machines used in manufacturing the article for which they are made, the Government cannot claim that a specified proportion of the business was put into a single hand. *Ib.*

8. *Combinations in; validity of combination of businesses of manufacturing patented machines.*

The District Court rightly held that the counts under review of the indictment against various persons for combining their businesses of manufacturing patented machines for making different parts of shoes, and not competing with each other, did not constitute an offense under the Sherman Anti-trust Act. *Ib.*

9. *Contracts within Anti-trust Act.*

A contract by which a manufacturer of a patented article appoints another who does not manufacture or sell like articles, his exclusive agent for the output of the factory, *held* in this case not to violate the Sherman Act. *Virtue* v. *Creamery Package Co.*, 8.

10. *Dissolution of combination; purpose of Anti-trust Act.*

The disintegration aimed at by the Sherman Anti-trust Act does not extend to reducing all manufacture to isolated units of the lowest degree. *United States* v. *Winslow*, 202.

See JURISDICTION, A 6;
PATENTS, 7.

RETIRED OFFICERS.

See REVENUE CUTTER SERVICE.

RETROACTIVE LEGISLATION.

See EMPLOYERS' LIABILITY ACT, 13;
STATUTES, A 1.

REVENUE CUTTER SERVICE.

Rank and pay of retired officers; construction of § 5 of act of 1908.
Section 5 of the act of April 16, 1908, 35 Stat. 61, c. 345, providing for rank and pay of retired officers of the Revenue-Cutter Service *held* not to give in this case an additional step forward to a retired officer who had already been advanced one step gratuitously. *United States* v. *Mason*, 486.

RIGHT OF WAY.

See PUBLIC LANDS, 16, 21;
RAILROADS, 7, 8, 9.

SAFETY APPLIANCE ACTS.

See EMPLOYERS' LIABILITY ACT, 1, 2.

SALES.

See CONTRACTS, 3, 4;
INTERSTATE COMMERCE, 2;
PATENTS, 8;
PUBLIC LANDS, 19.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 28.

SECRETARY OF THE INTERIOR.

See JURISDICTION, A 2;
PUBLIC LANDS, 27.

SECRET PROFITS.

See CORPORATIONS, 1.

SELF-INCRIMINATION.

See CONSTITUTIONAL LAW, 29.

SERVICE OF PROCESS.

See NOTICE.

SHERMAN ACT.

See RESTRAINT OF TRADE;
WITNESSES, 1.

SHIPPING CONTRACTS.

See INTERSTATE COMMERCE, 4–8.

SOVEREIGNTY.
See PORTO RICO, 2, 3, 4.

SPECIFIC PERFORMANCE.
See CONTRACTS, 7, 9, 10.

STARE DECISIS.
See COURTS, 6.

STATES.

1. *Classification in conflict with Federal Constitution.*

A State cannot, by defining a business subject to its own police power as including a class which is not subject to that power, deprive such class of rights protected by the Federal Constitution. *Crenshaw* v. *Arkansas*, 389.

2. *Legal machinery; power to limit use.*

The State is entitled at all times to prevent the perversion of its legal machinery, and may require that it be availed of only *bona fide*. *Fraternal Mystic Circle* v. *Snyder*, 497.

See CONGRESS, POWERS OF, 1, 2; CONSTITUTIONAL LAW, 1, 2, 4, 5, 13–17; 20, 22–26; COURTS, 4; FRANCHISES, 5; GOVERNMENTAL POWERS, 1; INTERSTATE COMMERCE, 4, 8, 10, 11, 18, 20, 33, 34, 37–44; NAVIGABLE WATERS, 1, 2.

STATUTES.

A. CONSTRUCTION OF.

1. *Application not retroactive.*

While there are exceptions, especially in the case of remedial statutes, the general rule is that statutes are addressed to the future and not to the past; and, in the absence of explicit words to that effect, statutes are not retroactive in their application. *Winfree* v. *Northern Pacific Ry. Co.*, 296.

2. *Departmental construction followed.*

The court in this case follows the construction of the statute by the officers of the Treasury Department. *United States* v. *Mason*, 486.

3. *Federal statute on Federal subject-matter; effect of state legislation.*

A Federal statute upon a subject exclusively under Federal control must be construed by itself and cannot be pieced out by state

legislation. If a liability does not exist under the Employers' Liability Act of 1908, it does not exist by virtue of any state legislation on the same subject. *Michigan Central R. R. Co.* v. *Vreeland*, 59.

4. *Inclusion of that which is excluded because of practical effect of statute.*

This court will not construe a state statute as including that which it expressly excludes on the ground that the practical effect will be to include cases which are so excluded therefrom. *Fraternal Mystic Circle* v. *Snyder*, 497.

5. *Local laws; considerations in determining character.*

In determining whether a statute is a local act of the nature prohibited by the Constitution, the legislature will not be supposed to be less faithful to its obligations than the court. *Gray* v. *Taylor*, 51.

6. *Local law; what constitutes.*

A local law means one that in fact even if not in form is directed only to a specific spot. *Ib.*

7. *Local law; what constitutes.*

A law is not necessarily a local law because it happens to affect a particular spot. *Ib.*

8. *Organic act of Territory; form of government intended by.*

In construing an organic act of a Territory this court will consider that Congress intended to create a government conforming to the American system of divided powers—legislative, executive and judicial—and did not intend to give to any one branch of that government power by which the government itself so created could be destroyed. *Porto Rico* v. *Rosaly*, 270.

9. *Punctuation; when considered.*

While punctuation is a fallible standard of the meaning of a statute, the location of commas in the description of a boundary line may be considered. *Northern Pacific Ry. Co.* v. *United States*, 355.

10. *Repeals; effect of Judicial Code to repeal Criminal Appeals Act.*

The Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, is a special provision and, as it is not mentioned in the repealing section of the Judicial Code of 1911 and is not superseded by any other regulation of the matter, it was not repealed by the Judicial Code.

(*United States, Petitioner*, 226 U. S. 420.) *United States* v. *Winslow*, 202.

See EMPLOYERS' LIABILITY ACT; INTERSTATE COMMERCE, 21; PRACTICE AND PROCEDURE, 10; RAILROADS, 3.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.

See LOCAL LAW.

STOCK AND STOCKHOLDERS.

See CORPORATIONS, 1–5.

STREETS AND HIGHWAYS.

See CONSTITUTIONAL LAW, 6, 7; FRANCHISES, 1–4, 7–9, 11.

SUBSTITUTION OF CLAIMS.

See PUBLIC LANDS, 1, 2, 3.

SUMMONS.

See JURY AND JURORS.

SURVEYS.

See PUBLIC LANDS, 15, 23, 24.

TAXES AND TAXATION.

Privilege tax; functions of.

A privilege tax may perform the double function of regulating the business under the police power and of producing revenue if authorized by the law of the State. *Bradley* v. *Richmond*, 477.

See ADVERSE POSSESSION; CONSTITUTIONAL LAW, 16, 17, 18; INTERSTATE COMMERCE, 18, 38.

TERRITORIES.

Local laws prohibited by act of 1886; effect of law of New Mexico.

The law of New Mexico Territory requiring that changes of county seats shall not be made under certain conditions is not violative of the act of 1886 prohibiting the Territory from passing local

laws because those conditions happen to apply to certain localities. *Gray* v. *Taylor*, 51.

See PORTO RICO, 1;
STATUTES, A 8.

TESTIMONY.

See EVIDENCE;
WORDS AND PHRASES.

TICKETS OF ADMISSION.

See CONTRACTS, 5, 6, 7.

TITLE.

See CONVEYANCES; PUBLIC LANDS, 15, 23–25;
NAVIGABLE WATERS, 1, 2; RAILROADS, 9.

TOWNSITES.

See PUBLIC LANDS, 26, 27, 28.

TRANSCRIPT OF RECORD.

See APPEAL AND ERROR, 8.

TRANSPORTATION.

See INTERSTATE COMMERCE, 1.

TREATIES.

1. *Brussels Treaty of 1900 construed.*

The Brussels Treaty of 1900 should be construed in accordance with the declaration of the Congress at which it was framed and adopted at the instance of the American delegates; and it was the sense of the Congress of the United States that the treaty was not self-executing. *Cameron Septic Tank Co.* v. *Knoxville*, 39.

2. *Indian; considerations in construction.*

In construing a treaty with Indians ceding lands the court will consider the differences in power and intelligence of the Indians and will not so construe it as to make it an instrument of fraud to deprive the Indians of more than they understood they were ceding. *Northern Pacific Ry. Co.* v. *United States*, 355.

3. *Calls bounding land in; ambiguity resolved, how.*

Where there is confusion in the calls bounding land described in a

treaty, the effort of this court should be to execute the intention of the treaty makers. *Ib.*

See PATENTS, 2, 3, 4, 5.

TRESPASS.

See RAILROADS, 10.

TRIAL.

See APPEAL AND ERROR, 5, 9.

TRUSTS AND TRUSTEES.

See INDIANS, 2, 3;
PUBLIC LANDS, 25.

UNITED STATES.

See CONTRACTS, 2;
GOVERNMENTAL POWERS, 1,
PUBLIC LANDS.

UTAH.

See LOCAL LAW.

VALUATION AGREEMENTS.

See INTERSTATE COMMERCE, 7, 23, 24, 26, 45–51.

VARIANCE.

1. *When not reversible error.*

A variance which is merely verbal as to the name of the railroad over which transportation was obtained in violation of the White Slave Traffic Act and which did not prejudice the defense, *held* in this case not to be reversible error. *Hoke* v. *United States*, 308.

2. *Prejudicial effect of variance in names.*

A variance in names cannot prejudice defendant if the allegation in the indictment and the proof so correspond that the defendant is informed of the charge and protected against another prosecution for the same offense. *Bennett* v. *United States*, 333.

3. *Prejudicial effect of, in prosecution under White Slave Act.*

Variances as to the name of the woman transported or in the place where the tickets were procured or as to the number transported, between the indictment and proof of offenses under the White

Slave Traffic Act *held* not to have prejudiced the defendants and not to be reversible error. *Bennett* v. *United States*, 333; *Harris* v. *United States*, 340.

4. *Timeliness of objection as to.*

The point of variance between indictment and proof relied on in this case not having been made in the trial court or Circuit Court of Appeals, comes too late when made in this court. *Harris* v. *United States*, 340.

VENDOR AND VENDEE.

See CONTRACTS, 9.

VERDICT.

See EMPLOYERS' LIABILITY ACT, 12.

VESTED RIGHTS.

Procedure to enforce as interference with.

It is not an interference with vested rights to prescribe the mode of procedure, or the time within which to enforce them, provided reasonable time be given therefor. *Cordova* v. *Folgueras*, 375.

See PUBLIC LANDS, 10, 11.

WARRANTY.

See CONVEYANCES;
INDIANS, 4.

WATERS.

See NAVIGABLE WATERS;
PUBLIC LANDS, 15, 23, 24.

WHITE SLAVE TRAFFIC ACT.

1. *Power of Congress to prohibit transportation of women for immoral purposes.*

While women are not articles of merchandise, the power of Congress to regulate their transportation in interstate commerce is the same, and it may prohibit such transportation if for immoral purposes. *Hoke* v. *United States*, 308.

2. *Same.*

The right to be transported in interstate commerce is not a right to employ interstate transportation as a facility to do wrong, and

Congress may prohibit such transportation to the extent of the White Slave Traffic Act of 1910. *Ib.*

3. *Legality under commerce clause of Constitution; effect to abridge privileges and immunities of citizens.*

The White Slave Traffic Act of June 25, 1910, c. 395, 36 Stat. 825, is a legal exercise of the power of Congress under the commerce clause of the Constitution and does not abridge the privileges or immunities of citizens of the States or interfere with the reserved powers of the States, especially those in regard to regulation of immoralities of persons within their several jurisdictions. *Hoke* v. *United States*, 308; *Athanasaw* v. *United States*, 326; *Bennett* v. *United States*, 333; *Harris* v. *United States*, 340.

4. *Gist of offense; debauchery defined.*

The White Slave Traffic Act of 1910 against inducing women and girls to enter upon a life of prostitution or debauchery covers acts which might ultimately lead to that phase of debauchery which consists in sexual actions; and in this case *held* that there was no error in refusing to charge that the gist of the offense is the intention of the person when the transportation is procured, or that the word "debauchery" as used in the statute means sexual intercourse or that the act does not extend to any vice or immorality other than that applicable to sexual actions. *Athanasaw* v. *United States*, 326.

5. *Evidence to establish violation of act; admissibility.*

Evidence of acts of defendants after the end of the journey *held* in this case to be admissible to show the action of defendants in inducing the transportation of women in interstate commerce in violation of the White Slave Traffic Act. *Hoke* v. *United States*, 308.

6. *Evidence; sufficiency; jury to determine.*

It is for the jury to determine the sufficiency of the evidence tending to show that defendants induced women to become passengers in interstate commerce in violation of the Act, and in this case it does not appear that their judgment was not justified. *Ib.*

7. *Instructions to jury.*

There was no error in the various instructions of the court in this case. *Ib.*

8. *Variance between indictment and proof; materiality.*

A variance which is merely verbal as to the name of the railroad over which transportation was obtained in violation of the White Slave

Traffic Act and which did not prejudice the defense, *held* in this case not to be reversible error. *Ib.*

9. *Variance between indictment and proof; non-prejudicial effect of.*
Variances as to the name of the woman transported or in the place where the tickets were procured or as to the number transported, between the indictment and proof of offenses under the White Slave Traffic Act *held* not to have prejudiced the defendants and not to be reversible error. *Bennett* v. *United States*, 333; *Harris* v. *United States*, 340.

10. *Violation through another.*
One can violate the White Slave Traffic Act through a third party acting for him. *Hoke* v. *United States*, 308.
See INTERSTATE COMMERCE, 53.

WILSON ACT.

See INTERSTATE COMMERCE, 18, 20, 21.

WITNESSES.

1. *Immunity from prosecution; purpose and effect of act of February 25, 1903.*
The obvious purpose of the act of February 25, 1903, c. 755, 32 Stat. 854, 904, granting to witnesses in investigations of violations of the Sherman Act immunity against prosecution for matters testified to, was to obtain evidence that otherwise could not be obtained; the act was not intended as a gratuity to crime, and is to be construed, as far as possible, as coterminous with the privilege of the person concerned. *Heike* v. *United States*, 131.

2. *Immunity from prosecution; extent of, under act of February 25, 1903.*
Evidence given in an investigation under the Sherman Act does not make a basis under the act of February 25, 1903, for immunity of the witness against prosecutions for crimes with which the matters testified about were only remotely connected. *Ib.*

3. *Non-expert; determination of qualification to give opinion evidence.*
It is the duty of the judge to determine whether non-experts are qualified to express an opinion as to sanity of the accused, and in this case there does not appear to have been any abuse of discretion. *Matheson* v. *United States*, 540.
See CONSTITUTIONAL LAW, 29.

WOMEN.

See INTERSTATE COMMERCE, 52, 53;
WHITE SLAVE TRAFFIC ACT.

WORDS AND PHRASES.

" *Debauchery* " as used in White Slave Traffic Act of 1910 (see White Slave Traffic Act, 4). *Athanasaw* v. *United States*, 326.

" *Drawn in question* " as used in § 250 of Judicial Code (see Jurisdiction, A 3). *Champion Lumber Co.* v. *Fisher*, 445; *Foreman* v. *Meyer*, 452.

Signification; difference in.
Like words may have one significance in one context and a different signification in another. *Porto Rico* v. *Rosaly*, 270.

" *Testimony.*"
The word " testimony " more properly refers to oral evidence than to documentary, and it is reasonable that a distinction should be made between the two. *Ensign* v. *Pennsylvania*, 592.

" *To sue and be sued* " as used in Organic Act of Porto Rico (see Porto Rico, 6). *Porto Rico* v. *Rosaly*, 270.

WRIT AND PROCESS.

See APPEAL AND ERROR; JURISDICTION, A 2;
HABEAS CORPUS; CORPORATIONS, 6–11

YAKIMA INDIANS.

See INDIANS, 6.